87-1921
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RAINSFORD J. WINSLOW and WINIFRED W. WINSLOW, Plaintiffs,

v.

KEITH D. WILLIAMS, ALMA JEAN WILLIAMS, DAMON A. McMAHAN, DOROTHY McMAHAN, MARGARET E. HARRINGTON, IRVIN R. KAISER, CAROLYN D. KAISER, WILLIAM C. KROSKOB, HELEN P. KROSKOB, MARK R. WEIMER, ARDITH WEIMER, D.E. STEGER ESTATE, RICHARD H. WATERS ESTATE, ROSEMARY J. WATERS, BERNIE HODAPP, ELAINE HODAPP, THOMAS WHEELER, ELEANOR WHEELER, JOHN CONN CLATWORTHY, BARBARA BRETT CLATWORTHY, KEITH L. GAY, DONNA J. GAY, LEE O'NEIL, STEVEN B. ARMSTRONG, DEBORAH ARMSTRONG, DWIGHT MOODY, MILDRED MODDY, JOHN F. FILLINGHAM, CHERYL A. FILLINGHAM, CYNTHIA J. BLAKE, ANDREW W. BLAKE, E. MILTON BINFORD, STANLEY I. ROSENER, ROBERT J. DYER III, STUTZ, DYER, MILLER, DELAP, MORGAN COUNTY OFFICIALS, E. ORD WELLS, HENRY KAMMERZELL, ROBERT BAUER, JOHN LINDELL, JUDGE MARVIN W. FOOTE, DEFENDANTS 41 through 50 John/Jane Does (unknown), Defendants.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT STATE OF COLORADO

Presented by:
Rainsford/Winifred Winslow, Pro Se
P.O. Box 250, Fort Morgan, CO 80701
Phone: (303) 867-6201

QUESTIONS/ISSUES PRESENTED

Issue No. 1--Did the Colorado Supreme Court, without review, err in not determining the Winslows did not get a fair trial before an impartial judge? U.S. Const., Amends. V and XIV

Issue No. 2--Did the Colorado Supreme Court err in not recognizing the scholarly Judgment of the Honorable George M. Gibson, Washington County District Court Case No. 84 CV 30, when he determined that Judge James R. Leh lost jurisdiction on 28 Nov 80 when he was presented with a Motion To Disqualify him (Judge Leh) together with a sufficient Affidavit? Judge Gibson determined that Judge Leh lost jurisdiction on that date because of bias and prejudice, which followed U.S. Supreme Court, Colorado Supreme Court, Colorado Court of Appeals case law. U.S. Const., Amends. V and XIV

Issue No. 3--Did the Colorado Supreme Court err in not demanding that the Colorado Court of Appeals review the Winslows' CROSS-APPEAL OPENING BRIEF, which they are obligated to review as per C.R.S. 13-4-106? This is a ministerial act, which was not followed and is alleged to be a violation of several Federal Civil Rights Statutes. U.S. Const., Amends. V and XIV

Issue No. 4--Did the Colorado Supreme Court err in not demanding that the Colorado Court of Appeals give Winslows the opportunity for oral arguments? The Colorado Court of Appeals has an arbitrary and capricious unprinted rule that Pro Se litigants are not permitted to give oral arguments. This is not equal protection of the law. U.S. Const., Amend XIV

Issue No. 5--Did the Colorado Supreme Court err in permitting the Colorado Court

of Appeals to remand this case at issue back to the Washington County District Court to dismiss all of Winslows' other issues? The issues being dismissed by the Colorado Court of Appeals are issues the Winslows had in their CROSS-APPEAL, which were not reviewed. This would be a further denial of due process. U.S. Const., Amends. V and XIV

Issue No. 6--Did the Colorado Supreme Court err in ignoring the fact that Judge Gibson utilized disqualification theories and case law backed up by the U.S. Supreme Court, the Colorado Supreme Court, and the Colorado Court of Appeals? This is a further denial of due process. U.S. Const., Amends. V and XIV

Issue No. 7--Did the Colorado Supreme Court err in not remanding this instant case back to the Colorado Court of Appeals for settlement when the majority of the

Class wanted to settle? (More than 150 Morgan Heights Class Members have suffered in different degrees because of this non-settlement position of the Colorado Court of Appeals.) U.S. Const., Amends. V and XIV

Issue No. 8--Did the Colorado Supreme Court err in apparently condoning the actions of Judge Leh as outlined in the Winslow CROSS-APPEAL? U.S. Const., Amends. IV and XIV

A few of the things Judge Leh did to show his bias and prejudice against the Winslows:

A. Judge Leh REWARDED a criminal act when he permitted Attorney Stanley I. Rosener to illegally hook up to the Winslows' privately owned sewer system. Instead of reprimanding him to the Colorado Supreme Court as required by CRCP 241.5, he gave Attorney Rosener a FREE sewer tap. This violates the U.S. Const., Amend. V going to confiscation of property without compensation.

B. Judge Leh gave a free sewer tap on the Winslow privately owned sewer system to Adversary Land Developer John Fillingham, which is a violation of the U.S. Const., Amend. V going to confiscation of property without compensation.

C. Judge Leh gave away by Judgment nearly five acres of Winslows' land to Morgan County, a severe adversary, even though Morgan County did not seek this land. This is a violation of the U.S. Const., Amend. V going to the confiscation of property for public use without compensation.

D. Judge Leh made numerous prejudicial remarks in open Court against the Winslows before hearing their case on the merits. This shows bias and prejudice, and no litigant is supposed to have to face a biased and prejudiced judge. U.S. Const., Amends. V and XIV

E. Judge Leh made certain highly prejudicial remarks against the Winslows and the Class in open Court on 2 Dec 81 and four witnesses in U.S. District Court testified what Judge Leh said. When the transcript of the hearing was received, these remarks were omitted and this is called TRANSCRIPT TAMPERING, which is not tolerated in any Court. (It is not known if Judge Leh told the Court Reporter to omit the remarks or whether the Court Reporter did this on his own. This

is a violation of the U.S. Const., Amends. V and XIV

There were numerous other incidents showing the bias and prejudice of Judge Leh, which are omitted for brevity sake.

Attorney General Notice

The Colorado Attorney General will be given notice as to the possible unconstitutionality of the decision by the Colorado Supreme Court and the Colorado Court of Appeals concerning the disqualification of judges. As per Title 28 USC § 2403(b), the Colorado Attorney General will be served three copies of this Petition.

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NOTE: See Page xiii.

OTHER AUTHORITY

COLORADO/FEDERAL STATUTES

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
STATE OF COLORADO

Petitioners Rainsford J. Winslow and Winifred w. Winslow respectively pray that a Writ of Certiorari issue to review the ORDER of the Supreme Court for the State of Colorado, dated 25 Jan 88. Also the ORDER of the Colorado Court of Appeals, which reversed the Washington County District Court case on 6 Aug 87. PETITIONS FOR REHEARING were either denied or not permitted.

PETITIONS/ORDERS BELOW

The ORDER of the Colorado Supreme Court was issued 26 Jan 88. (Appendix A.)

The OPINION from the Colorado Court of Appeals reversing the Washington Count District Court, was done 6 Aug 87. (Appendix B.)

The JUDGMENT from the Washington County District Court dated 26 Sep 85. (Appendix C.)

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked under Title 28 USC § 1257 since this case comes up from the Colorado Supreme Court, since there are U.S. Constitutional issues involved. There are also issues which will be raised concerning certain Federal Statutes.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. United States Constitution;

   First Amendment (in relevant part):

   "Congress shall make no law . . . abridging the freedom of speech or the press; or the right of the people peaceably to assemble and to petition the government for redress of grievances."

   Fifth Amendment; (in relevant part):

   "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Ninth Amendment; (in its entirety):

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Fourteenth Amendment; (in relevant part):

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

2. Federal Statues:

Titles 28 USC § 1257, 28 USC § 1343, 18 USC §§ 241 and 242.

INTRODUCTION

On 21 Jun 79, a Class Action lawsuit was filed in the Morgan County District Court as Case No. 79 CV 97. This case, should it last that long, will start the tenth year 21 Jun 88. The Petitioners feel they are good citizens, but they have

been trampled upon by the Colorado and Federal judicial systems. This will all be explained in this Petition. Here is a brief biography of the Winslows:

Rainsford J. Winslow--Born 29 Mar 21, Milwaukee, Wisconsin, Eagle Scout, served in U.S. Infantry, 1942 - 1945, awarded Combat Infantryman's Badge, Purple Heart, Bronze Star, European Theater. Robert N. Winslow, Sr., father, served in World War I as Captain 310th Engineers, European Theater; 2nd Lt. Robert N. Winslow, Jr., brother, killed in line of duty, 1 Aug 1944, World War II.

Journalism Graduate, Denver University ('47); Editor Fort Morgan Herald, 1947 - 1949; investment/real estate broker/free lance writer up through today. Past President Rotary Club, other civic leadership committees; member, Faith Presbyterian Church.

Winifred W. Winslow--Born 3 Oct 22, Denver, Colorado; Education Graduate, Denver University ('44); taught three years Denver school system, one year Fort Morgan. Lt. (jg) Myron g. Wright, father, U.S. Navy, M.D., World War I; Douglas Scott Winslow son, U.S. Army, Viet Nam service; Bruce W. Hand, son-in-law, U.S. Army service in Viet Nam, Germany, Korea.

Mrs. Winslow served on numerous women's

club committies, children's and church activities; Elder, Presbyterian Church; raised sone,two daughters and now helping with six grandchildren. Member Faith Presbyterian Church.

This shows that the Winslows are "solid citizens," but they haven't been treated as such by the Colorado and Federal Courts What will be presented should shock the Justices of this United States Supreme Court.

The Winslow Justice Journal

At the back of this Petition as Appendix D is a copy of THE WINSLOW JUSTICE JOURNAL Volume 7, No. 1, dated 26 Feb 88. Winslow publishes this JOURNAL anytime he feels that an injustice should be made visible. He is using his U.S. Constitutional Right to freedom of the press as guaranteed by the First Amendment.

He has appeared on several radio talk shows to further express his feelings about the Colorado and United States Court

systems utilizing the U.S. Constitution, First Amendment Rights going to freedom of speech. He has also authored a book entitled HOW TO COURT THE COURTS, which was published by the Mul-T-Rul Press in 1985.

Petitioners Winslow adopt by reference everything they put forward in their Petition to this Court on or about 10 Jun 84 as U.S. Supreme Court Case No. 83-2053 which was denied 1 Oct 84.

This horrible lawsuit not only has harmed the Winslows over this nearly nine year period, but it has caused severe damage to nearly 150 others in different degrees. It has put at least seven families into foreclosure of their homes in Morgan Heights, the subdivision in which this case evolves. Many Class Members have sold their properties well below the market value because of this lawsuit

stigma. There has been an "attorney fee lien" on all properties in Morgan Heights, which now has developed that it may cost Class Members $1,415 for something they wanted nothing to do with at all.

The tragedy of this Class action portion of this case, which indirectly affects this instant case, is almost unbelievable. Judge James R. Leh certified the Morgan Heights Class on 11 Jun 80, but there was no hearing concerning this matter, nobody was given the opportunity to realize what was going on, until 14 Nov 80. When the Class was notified as to what had happened, there were numerous protests by hearings, by affidavits, by letters, by petitions, but Judge Leh would not decertify this Class.

This matter was brought to the attention of the Colorado Court of Appeals, the Colorado Supreme Court, the Colorado United

States District Court, the United States Court of Appeals, and this Court at least two times, but not one Court would review the issue of the wrongful certification of the Morgan Heights Class.

How is it possible to force the Winslow children to be against their parents in such a lawsuit? How is it possible to put the Winslow business partners in the lawsuit against them? How is it possible to have the Winslows' attorney, who accepted Morgan Heights property for legal fees, to be an adversary to his own clients? This is exactly what happened! Nobody would hear this issue and just recently the Colorado Supreme Court denied relief to the Class, who are now being threatened with paying this legal fee in the amount of $1,415 per lot on some basis that is not even determined at this point.

It would take another 20 pages to explain this whole horror story concerning the Class quagmire.

On or about 27 Oct 86, there were 102 Class Members who voted to settle this case. About 50 did not object to the settlement proposal presented by the Winslows. Now only ten Class Members are holding up the settlement. Neither Colorado Court of Appeals nor the Colorado Supreme Court will permit a settlement They are listening to ten Class Members to the detriment of more than 150 Class Members.

This is a synopsis of this legal Colorado judicial tragedy. What the Winslows seek from the Court is a NEW, FAIR TRIAL BEFORE AN IMPARTIAL JUDGE IN A COLORADO COURT IN A VENUE OTHER THAN MORGAN COUNTY.

STATEMENT OF THE CASE

1. Rainsford J. Winslow and Winifred

W. Winslow started Morgan Heights, a 280 acre subdivision located four miles northwest of Fort Morgan, on 16 Jan 84, more than 34 years ago. Eighty acres are subdivided, 40 acres nearly subdivided, and 160 acres are undeveloped, but zoned for five acre tracts.

2. Between 1954 and 1971, seven homes were built in Morgan Heights, including the Winslow home, the first one, where they live today. They did not "sell and run." Between 1971 and 1979, 44 additional homes were built. On 21 Jun 79, 19 Morgan Heights families filed a Class Action lawsuit claiming the Winslows did not fulfill certain promises pertaining to roads, the sewer and water systems. There was nothing in any deed or contract the Winslows executed promising anything they did not provide.

3. Approximately 80 Morgan Heights

residents did not participate as Named-Plaintiffs and knew nothing about what was going on initially. The Morgan County Commissioners, under Morgan County Attorney E. Ord Wells, became adversaries to the Winslows in this case concerning the Morgan Heights roads.

4. There was all kinds of antagonism and conflict of interest when this lawsuit was filed as a Class action. There were four developers living within Morgan Heights developing property either adjoining or close by Morgan Heights. This included the late David E. Steger, Real Estate Broker Lee O'Neil, Condo Land Developer Keith D. Williams, and Housing Executive/Land Developer John Fillingham. Morgan County Attorney E. Ord Wells had, and still has,a pecuniary interest in a development property adjoining Morgan Heights on the east known as Three Lakes.

To understand this entire matter, see schematic map which is part of this Petition and is Appendix E.

5. There were five real estate developers WITHIN Morgan Heights who were attempting to develop certain lots IN MORGAN HEIGHTS, and they were Richard B. Paynter, Lawrence Floyd, Ted Curtis, David Cornwell, and Joe Heagney. The lawsuit completely killed the developments of these five men.

6. When the Morgan Heights lawsuit was filed, Morgan Heights was in compliance with all Colorado Department of Health regulations, all regulations on the water company concerning the Public Utilities Commission, all regulations of the Northeast Colorado Health Department, and all Morgan County zoning and subdivision requirements.

7. All of this is explained to give

background to this case. The merits of the Morgan Heights case are not at issue in this instant case.

8. While starting out in the Morgan County District Court, this case evolved into the Colorado Court of Appeals, several times into the Colorado Supreme Court, over to the United States District Court in Denver, then to the U.S. Court of Appeals, next up to the United States Supreme Court, then back to the Colorado Court of Appeals, then up to the Colorado Supreme Court, again back to the United States Supreme Court, then over to the Washington County District Court at Akron, Colorado, and here the Winslows got some relief before the Honorable George M. Gibson by his Judgment dated 26 Sep 85, Case No. 84 CV 30. This was a collateral attack on the Judgments of Judge Leh.

Judge Disqualification Issue

9. The Winslows had never heard about disqualifying a judge until 30 Sep 80 when there was a legal conference at the office of Fort Morgan Attorney George M. Reddin who was representing the Winslows on a limited basis. At this conference, besides Reddin were: Retired Senior Judge Donald A. Carpenter of Greeley, Brush Attorney Robert B. Chapin, Morgan Heights resident J.H. Garthwaite, and both Winslows. The Winslows that very day had gotten the transcript of a hearing on road matters that took place in open Court on 10 Sep 80. Judge Carpenter, serving as a Senior Attorney for the Winslows, said something like this:

JUDGE CARPENTER

> Your first order of business is to file a Motion To Disqualify Judge Leh, because he obviously has the point of view of a county attorney and a county commissioner rather than the point of

an impartial District Judge.

10. At the 10 Sep 80 hearing, it was pointed out to the Leh Court that the county commissioners were getting money for the Morgan Heights roads, proving that these roads were in the system. The county was not maintaining these roads starting in 1976 even though they were getting funds from the State.

11. Attorneys Reddin and Chapin agreed that a Motion should be filed to disqualify Judge Leh.

12. Chapin withdrew from the case and was replaced by Attorney Raymond C. Johnson of Lakewood, and on 28 Nov 80, a Motion and Memorandum to disqualify Judge Leh was filed together with a sufficient Affidavit. On that date, Judge Leh denied the Motion, and said on the record that he was not biased and prejudiced.

13. The Winslows attempted seven more

times through the Morgan County District Court, the Colorado Court of Appeals, and the Colorado Supreme Court to get Judge Leh disqualified, eight times total and each Motion was denied. Finally on 20 Jan 83, Judge Leh did withdraw from the case, leaving the Winslows to defend against horrible Judgments. (The merits of the Judgments are not at issue in this instant case.)

14. The bias and prejudice issue was put before all of the Courts mentioned earlier in this Petition, Pages iv, v, vi. Not one of these Courts reviewed the issue and it wasn't done until the matter got before Judge Gibson in the Washington County District Court, Akron, Colorado.

15. The U.S. Constitution, Amendments V and XIV guarantee any citizen due process of law, and the cornerstone of due process of law is an impartial judge.

There is also United States Supreme Court case law that backs up Gibson, who determined that Judge Leh lost jurisdiction on 28 Nov 80 when Attorney Johnson filed the Motion to Disqualify Judge Leh with sufficient Affidavit. Judge Gibson found that the Motion to Disqualify and the Affidavit were in fact, sufficient, which meant that all actions after 28 Nov 80 were null and void.

16. The Gibson Judgment dated 26 Sep 85 analyzed judge disqualification law in Colorado back to 1885 and utilized 41 cases not only from Colorado, but from Florida, Missouri, California, Michigan, Oregon, Montana, New York, Nebraska, Maine Kentucky, Ohio, and Georgia. A copy of the Gibson Judgment dated 26 Sep 85 is made part of this Petition, Appendix C.

17. The Winslow adversaries appealed to the Colorado Court of Appeals, Case

No. 85 CA 1537, and the Winslows Cross-Appealed since there were several issues the Winslows brought before Judge Gibson, which were not covered in his Judgment.

18. On 6 Aug 87, the Colorado Court of Appeals REVERSED Judge Gibson, BUT the three judges that reviewed Gibson did not review the Winslows' CROSS-APPEAL. The Winslows' Petition For Rehearing was denied in early October 1987 and the Winslows filed for Certiorari in the Colorado Supreme Court on 4 Dec 87. The Supreme Court of Colorado denied the Petition For Certiorari on 26 Jan 88. A Petition For Renearing is not permitted in Colorado when Certiorari is denied.

LEGAL ARGUMENTS

19. The Colorado Court of Appeals misapprehended the law in this instant case. It indicated the Judge Leh Judgments were VOIDABLE but not VOID as was determined

by the Honorable George M. Gibson in Washington County District Court Case No. 84 CV 30.

20. Judge Gibson, used Colorado case law, which uses a United States Supreme Court landmark case of Berger v. United States, 255 U.S. 22 (1921). This case says that when a judge is presented with a Motion To Disqualify him with a sufficient Affidavit, "he proceeds no further," and waits for the assignment of another judge. This is the law of the land and follows Colorado Supreme Court case law in numerous cases.

21. What actually happened was that on 28 Nov 80, Judge Leh was asked to disqualify himself with a sufficient Motion and Affidavit. He denied the motion. Judge Gibson ruled jurisdiction loss, voiding Leh's Judgments after 28 Nov 80. Judge George M. Gibson's scholarly Judgment

is Appendix C.

22. The Colorado Court of Appeals completely ignored Berger and other cases which will be cited later, and said the Winslows should have appealed the Morgan Heights case and it would have been deter mined that the Judgments were VOIDABLE. There is no legal theory the Court of Appeals correlated disqualification of judges and their VOIDABLE THEORY.

23. To the contrary, there are all kinds of cases that show that once a judge has been asked to disqualify himself with sufficient Affidavit, that judge loses jurisdiction at that point and anything done after that point is null and void. Beckord v. District Court, 698 P.2d 1323 (Colo. 1985); Burke v. District Court, 152 P. 149 (Colo. 1915); Erbaugh v. People, 140 P. 188 (Colo. 1914); Johnson v. District Court, 674 P.2d 952 (Colo. 1984);

People v. District Court, 560 P.2d 828 (Colo. 1977); U'Ren v. Bagley, 245 P. 1074 (Or. 1926), and here is an interesting citation from U'Ren:

> "The legislature in effect has said that it is better, as a matter of public policy and the due administration of justice that a judge, when challenged for bias or prejudice, should not act in that particular cause, even though he is blessed with all the virtues any judge ever possessed."

24. There are numerous cases that back up this position which are omitted for brevity sake.

Winslows' Unreviewed Cross-Appeal

25. One of the biggest travesties in this entire case is the fact that the Winslows paid their $150 CROSS-APPEAL fee to the Colorado Court of Appeals, but their CROSS-APPEAL was not reviewed. It would have proved conclusively that the Winslows were not given a fair trial be-

fore an impartial judge.

26. This is alleged to be extreme misconduct on the part of the three Colorado Court of Appeal Judges, namely Karen Metzger, John Criswell, and Harry Silverstein. Here is a statute under which they operate:

C.R.S. 13-4-106

> **Divisions.** (1) The Court of Appeals SHALL sit in divisions of three judges each **TO HEAR AND DETERMINE ALL MATTERS** before the Court.

27. CROSS-APPEALS are not exempt, and to review the Winslows' CROSS-APPEAL was a ministerial duty. Judges cannot take discretion when a ministerial duty is presented to them. They cannot use discretion in a ministerial duty, Ex Parte Virginia, 100 U.S. 339. This case of Ex Parte Virginia, supra was reaffirmed by this Court in Pulliam v. Allen, 466 U.S. 522 (1984).

28. The Court of Appeals had a ministerial act to do--review the Winslow CROSS-APPEAL, but they did not do it, a violation of due process. It could be alleged that it is also a violation of Titles 28 USC § 1334.

JUDGE LEH BIASED/PREJUDICED

29. The Winslows adopt by reference all of the areas of bias and prejudice that Judge Leh had as shown on Pages iv through vi. They also adopt by reference all of the areas of bias and prejudice as spelled out in U.S. Supreme Court Petition No. 83-2053 filed on or about 10 Jun 84.

30. If a judge REWARDS a criminal act to the detriment of a litigant, that in itself shows bias and prejudice of the judge.

Winslows Not Permitted Oral Arguments

31. The Colorado Court of Appeals has an unwritten rule which forbids a person

appearing Pro Se in their Court from presenting oral arguments. This is not equal portection of the law and is a violation of the U.S. Const., Amend. XIV going to equal protection.

REASONS FOR GRANTING CERTIORARI

32. There are numerous reasons for granting certiorari.

A. **The Winslows did not get a fair trial before an impartial judge.** With what has been presented proves this.

B. If this Court would GRANT certiorari, it would mean an end to the Class Action matter. Right now approximately 150 Absent Class Members are suffering in one degree or another, and while this was not an actual issue within Washington County District Court Case No. 84 CV 30, it certainly tied into the major Morgan Heights case in Morgan County District Court Case No. 79 CV 97. If this Court would grant relief to the Winslows, this would permit

the whole case to settle, and it should have been settled in November 1986.

33. These reasons should be sufficient to grant certiorari. Another big reason would be that this could stop a nearly nine year travesty.

CONCLUSION

34. The Winslows pray that this Court will grant certiorari and hopefully bring this legal horror story to a close.

35. Petitioners Winslows plead that this Court require Respondents to file an answer to this Petition because Petitioners are convinced the Respondents cannot dispute any of the facts put forth in this document.

Respectfully submitted,

Rainsford J. Winslow Winifred W. Winslow

Opposing Counsel

Robert J. Dyer III, Representing Plaintiffs
825 Logan
Denver, CO 80203

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF MORGAN)

RAINSFORD J. WINSLOW and WINIFRED W. WINSLOW, of lawful age, being first duly sworn upon their oaths, depose and state as follows:

That they have read the foregoing PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT, STATE OF COLORADO, know the contents thereof; and that the statements therein contained are true and correct to the best of their knowledge, information, and belief.

Rainsford J. Winslow Winifred W. Winslow

SUBSCRIBED AND SWORN TO BEFORE ME ON OR BEFORE May 24, 1988.

WITNESS my hand and official seal.
My commission expires August 7, 1991.

(SEAL) NOTARY PUBLIC
STATE OF COLORADO
JEAN K. NIELSEN

Notary Public
Jean K. Nielsen

CERTIFICATE OF SERVICE: I hereby certify that a true and correct copy of the foregoing instrument was served by U.S. Mail or hand delivery on or before May 24, 1988 to:

Robert J. Dyer III
825 Logan
Denver, CO 80203

APPENDIX A

Supreme Court, State Of Colorado

Rainsford J. Winslow and Winifred W. Winslow, Petitioners, v. Keith D. Williams, Alma Jean Williams, Damon A. McMahan, Dorothy McMahan, Margaret E. Harrington, Irvin R. Kaiser, Carolyn D. Kaiser, William C. Kroskob, Helen P. Kroskob, Mark R. Weimer, Ardith Weimer, Estate of D.E. Steger, Estate of Richard H. Waters, Rosemary J. Waters, Bernie Hodapp, Elaine Hodapp, Thomas Wheeler, Eleanor Wheeler, John Conn Clatworthy, Barbara Brett, Keith L. Gay, Donna J. Gay Lebsack, Lee O'Neil, Steven B. Armstrong, Deborah Armstrong, Dwight Moody, Mildred Moody, John F. Fillingham, Cheryl A. Fillingham, Cynthia J. Blake, Andrew W. Blake, E. Milton Binford, Respondents. Supreme Court Case No. 87 SC 402; Certiorari To The Colorado Court of Appeals Case No. 85 CA 1537; Washington County District Court Case No. 84 CV 30.

Filed: January 25, 1988.

Certiorari To The
Colorado Court Of Appeals

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the opinion of said Court of Appeals,

IT IS THIS DAY ORDERED that said Peti-

tion for Writ of Certiorari shall be,

and the same hereby is, DENIED.

BY THE COURT, EN BANC, JANUARY 25, 1988.

APPENDIX B

Colorado Court Of Appeals

Rainsford J. Winslow and Winifred W. Winslow, Plaintiffs-Appellees and Cross-Appellants, v. Keith D. Williams, Alma Jean Williams, Damon A. McMahan, Dorothy McMahan, Margaret E. Harrington, Irvin R. Kaiser, Carolyn D. Kaiser, William C. Kroskob, Helen P. Kroskob, Mark R. Weimer, Ardith Weimer, D.E. Steger, Richard H. Waters, Rosemary J. Waters, Bernie Hodapp, Elaine Hodapp, Thomas Wheeler, Eleanor Wheeler, John Conn Clatworthy, Barbara Brett Clatworthy, Keith L. Gay, Donna J. Gay, Lee O'Neil, Steven B. Armstrong, Deborah Armstrong, Dwight Moody, Mildred Moody, John F. Fillingham, Cheryl A. Fillingham, Cynthia J. Blake, Andrew W. Blake, E. Milton Binford, Stanley I. Rosener, Robert J. Dyer III, Stutz, Dyer, Miller, Delap, Morgan County Officials, E. Ord Wells, Henry Kammerzell, Robert Bauer, John Lindell, Judge Marvin W. Foote, Defendants 41 through 50 John/Jane Does (Unknown), Defendants-Appellants and Cross-Appellees. Colorado Court of Appeals No. 85 CA 1537.

Filed: August 6, 1987.

Appeal from the District Court of Washington County, Honorable George M. Gibson, Judge.

Opinion From Colorado Court Of Appeals

DIVISION II
Opinion by JUDGE METZGER
Criswell and Silverstein*, JJ., concur

JUDGMENT REVERSED
AND CAUSE REMANDED
WITH DIRECTIONS

Rainsford J. Winslow and Winifred W. Winslow, Pro se

Stutz, Dyer, Miller & Delap
Robert J. Dyer III
Denver, Colorado

Attorneys for Defendants-Appellants and Cross-Appellees

*Sitting by assignment of the Chief Justice under provisions of the Colo. Const., art. VI, Sec. 5(3), and §24-51-607 (5), C.R.S. (1982 Repl. Vol. 10).

In this proceeding, plaintiffs, Rainsford J. and Winifred W. Winslow, sought to set aside two judgments entered in favor of plaintiffs by the Morgan County District Court. From the judgment of the Washington County District Court granting the requested relief, defendants appeal. We reverse and remand with direc-

tions.

In January of 1981 and October of 1982, judgments were entered against the Winslows by the Morgan County District Court in case number 79CV97, a class action suit filed by property owners in the community of Morgan Heights, arising out of a dispute concerning road construction and maintenance and water and sewer service. Before the trial of that matter, the Winslows filed a motion for disqualification of the trial judge alleging bias and prejudice. The trial judge denied that motion and, after a trial, entered judgment on the merits.

The Winslows appealed the judgment to this court. That appeal, Colo. App. No. 83CA0211, was dismissed with prejudice (and without written opinion) because of the Winslows' failure to file the complete record on appeal in a timely manner.

Our supreme court and the United States Supreme Court denied their subsequent petitions for certiorari.

On October 1, 1984, the Winslows commenced this action in the Washington County District Court, alleging, inter alia, that the Morgan County trial judge should have disqualified himself because of bias or prejudice and that the court therefore lacked jurisdiction to render the judgments against them. Among the defendants named in the Winslows' complaint were members of the plaintiff class in case number 79CV97. The Washington County District Court determined that the Winslows had filed a legally sufficient motion to disqualify the Morgan County trial judge. Thus, it held that the judge was divested of jurisdiction to proceed further in the case, and concluded that the judgments rendered in

January of 1981 and October of 1982 were therefore void.

Defendants now appeal that ruling, and the Winslows have filed a notice of cross-appeal. This court issued an order directing the parties to address the following issues in their briefs: 1) was the trial court correct in ruling that, as to the motion to disqualify, the affidavit and the transcript were sufficient to disqualify the Morgan County trial judge; 2) may this issue be raised in either a motion pursuant to C.R.C.P. 60(b) or an independent equitable action for relief from judgment; and 3) are the Winslows precluded, by either waiver or estoppel, from raising this issue in either a C.R.C.P. 60(b) motion or an independent equitable action.

Initially, it is necessary to determine whether the proceeding in the Washington

County District Court is properly characterized as a motion for relief from judgment under C.R.C.P. 60(b) or whether it is an independent equitable action. Although the Winslows make reference to seeking relief under C.R.C.P 60(b), the action was filed in the same manner as any other new civil action, i.e., by the filing of a complaint. In addition, the action was filed approximately two years after the October 1982 Morgan County District Court judgment, was filed in a court other than the Morgan County District Court, and was assigned a docket number different from the docket number under which the previous judgment was entered. Under these circumstances, we conclude that this proceeding is properly characterized as an independent equitable action to set aside a judgment. See C.R.C.P. 60(b); Atlas Construction Co.,

Inc. v. District Court, 197 Colo. 66, 589 P.2d 953 (1979); Dudley v. Keller, 33 Colo. App. 320, 521 P.2d 175 (1974).

The issue thus becomes whether an independent action can be pursued as a means of attacking the 1982 final judgment. We hold that under Miller v. Owens, 55 Colo. 88, 133 P. 141 (1913), the Winslows are estopped from relitigating the issue of the propriety of the Morgan County trial judge's failure to disqualify himself.

In Miller v. Owens, supra, the plaintiff (Miller) commenced an equitable action to set aside an adverse judgment alleging that the court which entered the judgment was without jurisdiction to do so. Specifically, Miller alleged that the judgment was rendered when the court was not in session. Miller's claim of lack of jurisdiction was raised in the trial court and decided adversely to him. Although

he commenced an appeal from the trial court's judgment, he abandoned it, electing instead to raise his claim in an equitable action, based on his belief that such an action would be more speedy and direct.

In affirming the district court's dismissal of the equitable action, our supreme court determined that, inasmuch as the issue relied upon by Miller in the equitable action had been presented to the trial court and ruled on adversely to Him, it was res judicata and could be reviewed only by appeal of the judgment entered in the original action. The court further determined that if the remedy of appellate review is available to a party, but is lost by his failure to take the steps necessary to secure such review, then he may not resort to equity to accomplish that which could have accomplished

through appeal. The court stated:

> "Relief will not be granted in equity against a judgment at law where the party has an adequate remedy as to the matters complained of by appeal or error, and makes no effort to avail himself of ait, or has lost such remedy by failing to take proper steps to secure or perfect his appeal or writ of error."

Miller v. Owens, supra. See also Duran v. Adjustment Bureau, Inc., 132 Colo. 269, 287 P.2d 441 (1955); Snider v. Rinehart, 20 Colo. 448, 39 P. 408 (1895); 7 Moore's Federal Practice, § 60.37[2] at 60-385.

Here, the Winslows presented their claim of bias and prejudice in the trial court and raised it in their appeal to this court. That appeal was dismissed, however, because of the Winslows' failure to comply with applicable rules of procedure, and subsequent petitions for certiorari were denied by both the Colorado and United States Supreme

Courts. Under these circumstances, the Winslows may not now resort to an independent equitable action as a means of accomplishing what they should have sought to accomplish through appeal.

Relying on Johnson v. District Court, 674 P.2d 952 (Colo. 1984), the Winslows argue that res judicata should not apply because the Morgan County District Court lost jurisdiction when their motion for disqualification was filed. Thus, they contend that the judgment was void for lack of jurisdiction and can be attacked in an independent equitable action. This argument is misplaced.

A judgment entered without jurisdiction is void and may be attacked in a collateral proceeding. McLeod v. Provident Mutual Life Insurance Co., 186 Colo. 234, 526 P.2d 1318 (1974). However, if a court with jurisdiction enters a judgment erro-

neously, that judgment is merely voidable and is binding upon the parties unless vacated by the trial court or reversed by an appellate court. Such judgments are not susceptible to collateral attack. McLeod V. Provident Mutual Life Insurance Co., supra.

The question of whether a judge should be disqualified in a civil case is a matter within the discretion of the trial court. In re Marriage of Mann, 655 P.2d 814 (Colo. 1982). In Johnson v. District Court, supra, our supreme court determined that, if a trial judge in a civil case abused his discretion in denying a motion for disqualification, that judge did not have the authority to determine any other substantive matter that was pending before him. However, it did not hold, as the Winslows contend, that an

individual judge's lack of authority to determine substantive issues is equivalent to a lack of jurisdiction over the parties or subject matter by the district court. Thus, the judgment entered in Morgan County was merely voidable and may not be collaterally attacked.

Because the Winslows are estopped from relitigating in an independent equitable action the issue of the Morgan County trial judge's failure to grant their motion for disqualification, the judgment entered by Washington County District Court cannot stand. In view of this determination, we find it unnecessary to reach the other issues briefed by the parties.

The judgment is reversed, and the cause is remanded with directions to dismiss the Winslows' complaint with prejudice.

JUDGE CRISWELL and JUDGE SILVERSTEIN concur.

APPENDIX C

Judgment And Decree
Washington County District Court

Rainsford J. Winslow and Winifred W. Winslow, Plaintiffs, v. Keith D. Williams, Alma Jean Williams, Damon A. McMahan, Dorothy McMahan, Margaret E. Harrington, Irvin R. Kaiser, Carolyn D. Kaiser, William C. Kroskob, Helen P. Kroskob, Mark R. Weimer, Ardith Weimer, D.E. Steger, Richard H. Waters, Rosemary J. Waters, Bernie Hodapp, Elaine Hodapp, Thomas Wheeler, Eleanor Wheeler, John Conn Clatworthy, Barbara Brett Clatworthy, Keith L. Gay, Donna J. Gay, Lee O'Neil, Steven B. Armstrong, Deborah Armstrong, Dwight Moddy, Mildred Moody, John F. Fillingham, Cheryl A. Fillingham, Cynthia J. Blake, Andrew W. Blake, E. Milton Binford, Stanley I. Rosener, Robert J. Dyer III, Stutz, Dyer, Miller, Delap, Morgan County Officials, E. Ord Wells, Henry Kammerzell, Robert Bauer, John Lindell, Judge Marvin W. Foote, Defendants 41 through 50 John/Jane Does (unknown), Defendants. Washington County District Court No. 84 CV 30.

Filed: September 27, 1985.

Judgment And Decree

This claim duly came on for trial on the 25th day of July, A.D. 1985. The

Plaintiffs, Rainsford J. Winslow and Winifred W. Winslow, appeared in person, pro-se. Defendants Robert J. Dyer III, Stutz, Dyer, Miller, DeLap, Morgan County officials E. Ord Wells, Henry Kammerzell, Robert Bauer, John Lindell and Judge Marvin W. Foote were dismissed heretofore from the case and did not appear. The other named Defendants were represented by Stutz, Dyer, Miller & DeLap, their attorneys, Robert J. Dyer III, esquire, appearing. Evidence was had, arguments were made and the Court took the matter under advisement.

FINDINGS OF FACT

The Court now being fully advised in the premises, DOTH FIND:

1. The Plaintiffs Winslow, hereinafter referred to as the Winslows sometimes, attack two judgments entered in the Morgan County District Court in Case No. 79CV97,

entitled Keith D. Williams, et al., Plaintiffs, vs. Rainsford J. Winslow, et al., Defendants, by James R. Leh, the District Judge presiding at the trial. The grounds are that the Winslows, Defendants, had filed a motion sufficient to disqualify Judge Leh, that Judge Leh had not disqualified himself and denied the motion and that all proceedings thereafter, including the judgments, were void. A pre-trial order was entered which provided there were three issues: one, whether the Winslows could collaterally attack the judgments; two, if so, are the Winslows barred by res judicata from attacking the judgments for the matter had been decided in the Supreme Court cases 82-SA-15 and 84 SC 78; and, three, were the Motions to Disqualify, affidavits and transcript sufficient to disqualify Judge Leh.

2. All evidence was documentary. The

complaint in the Morgan County claim was filed by Morgan Heights Landowners Association and all persons listed as Defendants in the case at bar up to and including the name of Stanley I. Rosener. The Defendants were the Winslows, two of their utility companies and "Morgan County, by and through its County Commissioners Robert Bauer, John Lindell and Henry Kammerzell." The complaint charges breach of contract by the Winslows of a contract growing out of the sale of lots in two subdivisions near Fort Morgan, known as Morgan Heights. There were other grounds of recovery averred. The averments concerning Morgan County are contained in paragraphs 31, 32, 33 and 34 of the complaint (Plaintiffs' Exhibit A), wherein it is averred that the Winslows contracted with Morgan County to construct and complete the streets in Morgan Heights; that

Plaintiffs are third-party beneficiaries of such contract and that Morgan County had done nothing to enforce the contract.

3. Morgan County filed an answer, affirmative defenses and a Cross-claim wherein the County averred that it had accepted the dedication of streets and roads in the second plat of Morgan Heights on condition that the Winslows within six months construct such streets in a condiction equal to other county roads in the area. The County prayed that in the event Plaintiffs obtain judgment against Defendant County, then judgment be entered in favor of the County against the Defendants Winslow in a like amount, plus attorney fees. The Winslows, as Defendants in the Morgan County case, filed a Motion for Summary Judgment against Morgan County (Plaintiffs' Exhibit L). A memorandum brief in support of

the motion was filed (Plaintiffs' Exhibit M). The brief states that Morgan Heights first addition was filed for recording on February 25, 1955. A second addition was filed and approved by the County Commissioners. Among the statements to show the roads in the subdivisions are public roads, was one that the County had included the roads in the Morgan County road system since at least 1973 and the County had utilized the roads in the subdivisions to calculate the Morgan County road mileage for payments from the Colorado Highway Users' Fund. Attached to the brief is an affidavit, referred to in the motion, of John J. Dolan, Manager of the Planning Support Branch of the Colorado State Department of Highways. Dolan keeps the records for the purpose of certifying to the State Treasurer the mileage figures for the allocations of funds of the High-

way Users' Tax Fund. The records show that since 1973 the Morgan Heights roads were maintained by Morgan County. Attached to the affidavit are copies of two letters and computer readouts.

4. Morgan County responded by stating that the sixth claim for relief against the County is for a declaratory judgment that Morgan County is responsible for the maintenance of the roads in the subdivision by reason of its acceptance of the dedication of such roadways by the Winslows. The County admitted the inclusion of the said roads to calculate the road mileage and to receive funds from the Highway Users' Fund. The County further contended the receipt of such monies is not conclusive on the question of whether the County had accepted the dedication of the roads. The County said there was a dispute between it and the

Winslows as to whether the roads were public or private (Plaintiffs' Exhibit N). The County further contended that the road inventory had been prepared by the Colorado Department of Highways. Exhibit 6 of Plaintiffs' Exhibit N contains an affidavit by County Commissioners of Morgan County, Kammerzell and Bauer, to the effect that they signed the certificate (of road mileage) dated March 28, 1979 and they and Lindell signed the certificate dated March 28, 1979. The certificates were ministerial functions. Their purpose was to participate in the Highway Users' fund and had no bearing on the question of such roads being dedicated or accepted.

5. Judge Leh denied the Motion For Summary Judgment on September 9, 1980. The Court states it did not feel that the Court was in a position to find either

legal or implied acceptance of the roads by the County (Page 4, Plaintiffs' Exhibit O), and stated further:

"Insofar as the use of the county tax--sorry--state highway users tax funds are concerned, I agree that may have some bearing on the outcome of either issue of implied or legal acceptance. How much I'm not sure. The Court simply states its previous experience in this field, which I am sure is familiar to the parties involved, counsel involved. I was once a county attorney and also once a county commissioner and I am aware that perhaps, if anything, it debilitates against the argument that the twenty year statute that is being argued for by counsel, since this wasn't even done, as I understand it, until '73. And at that point, just procedurally, what generally happens is the state presents what you have sort of revealed here on a computer printout. And to put it rather bluntly, the County Commissioners are so tickled to death to get some money from the state they don't often look too carefully at what roads are included, but they look more carefully at what has been excluded, and do it from the standpoint of additional revenue to the county road fund. I think

you would have a stronger case if in fact this had been left out of the statement sent up by the state and the Commissioners had said, Oh, wait a minute. The roads out there in Morgan Heights should be considered specifically for that purpose. Again, that is not judging it one way or another. I don't know what happened as far as the procedure in '73 when that was presented to the Commissioners, and I don't want to think that I am prejudging that issue because it does occur on a different basis in each county.

"I know there are some counties, as do the Commissioners and probably everybody in the room, in the souhtwestern part of Colorado where somebody ran through there with a maintainer once and they got highway users tax for hundreds of miles of roads. I've forgotten what county that was, but it was a scandal. Every time we have had a county commissioners' meeting that was talked about because it took money out of a lot of people's pockets. That has been tightened up considerably. And for what it's worth, it may be since that developed. I can't remember what county that was, but it seems to me it was in the vicinity of Alamosa, in that country.

"The State Highway Department was a little bit more careful

in determining the extent and nature of maintenance, and it may very well be that there will be some factual basis for implying acceptance by the county, depending on what, if anything, is found by the state highway people when they came out and inspected those lands.

"They do come out, at least they used to, and go over every bit of road that you had on that system and if they didn't like what they had then they took it off. So that particular item I think can cut either way." (Plaintiffs' Exhibit O, pages 5 and 6).

6. On November 28, 1980, Defendants Winslow filed their Motion to Disqualify Judge James R. Leh, as trial judge on grounds set forth in the attached memorandum in support of the motion and affidavit of the Winslows, which refers to the transcript by the Court Reporter (Plaintiffs' Exhibit O). Judge Leh on November 28, 1980 denied the Motion to Disqualify.

7. On January 12, 1982, the Winslows filed a petition, denominated Petition for Writ of Mandamus in the Supreme Court

(Defendants' Exhibit 1). The petition was filed while case No. 79CV97 was being tried, there having been seven days of trial. The grounds of the petition were that twice Judge Leh had denied motions sufficient to disqualify him. One was the denial of November 28, 1980, the subject of the case at bar, and the other growing out of the hearing of October 23, 1981, resulting in a Motion to Disqualify of October 30, 1981. On November 7, 1981 Judge Leh denied this motion. In regards to the Motion to Disqualify which is the subject of this claim at bar, that of November 29, 1980, Judge Leh wrote:

> ". . . the court's decision . . . was not attacked either on original proceeding or on appeal, and they are, therefore, irrelevant and moot for the purpose of dealing with the present motion." (Order of November 8, 1981, copy of which is attached to Memorandum in Support for Disqualification about two-thirds through said Exhibit 1).

The Supreme Court on January 14, 1982, denied the Petition for Writ of Mandamus without stating reasons and without issuing an Order to Show Cause.

8. (a) The District Court in said Civil Action 79CV97 entered at least two judgments, one in favor of the Plaintiffs and the other in favor of Morgan County, and both against the Defendants Winslow. The written text of the judgment dated October 25,1982 appears at pages 41 to page 100 of Defendants' Exhibit 2 in the case at bar. The text of the judgment of January 30, 1981, in favor of Morgan County appears in Defendants' Exhibit 1 in the case at bar. It consists of 16 pages and is found approximately in the latter one-third of said Exhibit 1. The pages are not numbered.

(b) The Winslows filed an appeal in the Colorado Court of Appeals bearing

No. 83CA0211. On June 17, 1983, the Court of Appeals noted that the Court did not have a complete transcript of the entire trial for consideration (Defendants' Exhibit 2, pages 141, 142). The Court of appeals required the Winslows to produce a transcript. In January it dismissed the appeal (page 2 of Winslows Petition for Writ of Certiorari in very front of said Exhibit 2). The petition states grounds A to H as issues. Only F and H concern the dismissal of the appeal. On pages 3, 5 and 6 the Winslows present their principle contention that they were denied a fair trial before Judge Leh who they claim was disqualified because of two occurences, one of which is the Motion for Disqualification denied on November 20, 1980. The petition for Writ of Certiorari bore No. 84SC78.

(c) The Petition for Writ of

Certiorari was denied by the Supreme Court on March 26, 1984, without opinion and without statement of reasons. The evidence does not show that there was issued an Order to Show Cause.

9. The judgments involved are not specifically set forth in the pleadings or evidence of Plaintiffs Winslow. However there appears in full in Defendants' Exhibit 1 the so-called County or road judgment, entered January 30, 1981 (Defendants Exhibit 1, about midway). This judgment finds the Defendants Winslow agreed to construct the roads in Morgan Heights and the County is entitled to a judgment ordering the Winslows to specifically perform agreement and is entitled to security (paragraph 11, page 11 of the judgment). The Court finds the cost of construction of said roads would be $150,000 (paragraph 8, page 10 of the judgment).

The Court further found that the Plaintiff class (Plaintiffs in Case No. 79CV97 and some of the Defendants in the case at bar) are third-party beneficiaries of the agreement of January 24, 1974 and that the Plaintiff class is entitled to specific performance of said agreement, and that damages were inadequate (paragraph 17, page 13 of judgment). The Court ordered specific performance, granted security on some of the Winslows' property There was a separate judgment of October 25, 1983 granting various money judgments in favor of some of the Defendants (pages 041 to 100, Defendants' Exhibit 2).

10. The caption of this claim does not name Morgan County as a party Defendant. The judgment of January 3, 1981, in said case 79CV97 was in the name of Morgan County. Although the complaint contains averments concerning the County,

the Court does not deem Morgan County to have been a Defendant in this case. See Rule 4, Rules of Civil Procedure. Further Morgan County was named as a Defendant in said claims No. 79CV97 and was not a member of the class of which the Defendants names in the case at bar were the representatives.

CONCLUSIONS OF LAW

I. Question of Collateral Attack.

(a) The Court concludes that this is a collateral attack on the judgments entered in case No. 79CV97 in the Morgan County District Court. People ex rel. Burke v. District Court, 72 Colo. 486, 212 P. 837 (1923).

(b) Defendants cite People v. Coyle, 654 P.2d 815, 819 (Colo. 1982) to the effect that a judgment may be attacked collaterally only when the Court entering it lacked personal or subject matter jurisdiction. However, in People ex rel Burke v. District Court, 72 Colo. 486, 212 P. 837 (1923), the Court held that

even though a Court has jurisdiction over subject matter and person, it lost jurisdiction in deciding the case contrary to the statute establishing public policy in the election of corporate directors, and stated:

> "Jurisdiction in its fullest sense, is not restricted to the subject matter and parties. If the court lacks jurisdiction to render, or exceed its jurisdiction in rendering a particular judgment in a particular case, such judgment is subject to collateral attack, even though the court had jurisdiction of the parties and the subject matter." People ex rel Burke, 72 Colo. 504.

Burke was followed in French v. Commercial Credit Co., 99 Colo. 447, 64 P.2d 127 (1936), where a replevin decree of a trial court was successfully attacked collaterally. Burke was followed also in West End Irrigation Co. v. Garvey, Executor, 117 Colo. 109, 184 P.2d 476 (1947.)

The Court concludes that the judgments

which are the subject in the case at bar can be attacked on jurisdictional grounds, other than that of jurisdiction of the subject matter and of the person.

II. Jurisdictional Grounds.

(a) In Beckord v. District Court of Larimer County, 698 P.2d 1323 (Colo. 1985), it was held that the doctrine adopted in Colorado in criminal cases that a disqualified judge is without jurisdiction in the case in matters involving judicial discretion applies to civil cases (698 P.2d 1330). The decision was preceded by Johnson v. District Court, 674 P.2d 952 (Colo. 1984) which held the denial of a Motion to Disqualify supported by affidavit showing bias or prejudice by a trial judge was an abuse of discretion. In Johnson the second footnote states that the opinion contains citations to cases involving both criminal and civil cases

for the policy considerations underlying the rationale if criminal cases are persuasive in the civil case. Thus all distinction between civil and criminal in the matter of disqualification of judges in Colorado was abolished.

Section 30 and 31 of the Colorado Code of Civil Procedure, Laws 1887, Page 103, provided a method for disqualification of judges in civil cases. The Code stipulated that a ruling denying a petition to disqualify may be assigned as error in the Supreme Court. Under this code it was held that the matter of disqualification lies in the sound discretion of the judge to whom the application was made and is not reviewable unless there is an abuse of discretion. People v. District Court, 30 Colo. 488, 71 P. 388 (1903) and Nordloh v. Packard, 45 Colo. 515, 101 P. 787 (1909). CRCP 97, Colorado Rules of

Civil Procedure adopted January 6, 1941, provides one of the grounds for disqualification of a judge is that he is prejudiced. If a motion, supported by affidavit, is made he "shall be disqualified." The rule does not retain the provision of the Code that denial of the motion may be assigned as error. In Re Marriage of Mann, 655 P.2d 814 (Colo. 1982), holds that the question of whether a judge should be disqualified in a civil case is a matter within the discretion of the trial court.

(b) In criminal matters the present statute and rule, Section 16-6-201; 1973 C.R.S. and Rule 21(b), Colorado Rules of Criminal Procedure, are essentially the same as the early statutes (Laws 1885, page 385 and Laws 1887, page 74). The essential provisions are that a judge is incompetent or disqualified to hear or try a case if he is prejudiced. Provisions

are made for a motion and for supporting affidavits. Under these provisions it was held that when a Defendant has brought himself within the perview of the statute, the judge loses jurisdiction except to grant the change. Erbaugh v. People, 57 Colo. 48, 140 P.188 (1914); People v. District Court, 60 Colo. 1, 152 P. 141 (1915) and People v. District Court, 192 Colo. 503, 560 P.2d 828 (1977).

The Court concludes that if a party litigant files a Motion to Disqualify a trial judge in a civil action sufficient under said Rule 97 to disqualify, the Court loses jurisdiction.

(c) JURISDICTION AND COLLATERAL ATTACK.

The Colorado cases cited in this decree and judgment concerning the disqualification of judges are direct attacks. None of them are collateral attacks. In

Wood v. Clarke, 188 Ga. 697, 4 S.E. 2d 659, 124 A.L.R. 1077 (1939), the Court notes that there are expressions in some Georgia cases that a trial goes for naught where a disqualified judge sits. The Georgia Court considered the statute involved and held, since the disqualification could be waived, that the acts of a disqualified judge are not void but are voidable. The sentence of the Defendant in that case could not be collaterally attacked. This is a common law rule. Sexton v. Barry, (C.A. Ohio) 233 F.2d 220, 224, 225 (1916); Dotson v. Burchette, 301 Ky. 28, 190 S.W.2d 697 (1945); Dickinson v. Raichl, 120 Fla. 907, 163 So. 217 (1935) and 48A C.J.S. 866 to 868. There are many cases which hold to the contrary. These cases are based on the provisions of the statute, constitution or rule involved. A good discussion of the principles involved

is contained in Blaisdell v. Inhabitants of Town of York, 110 Me. 500, 87 A. 361 (1918). The Court states that the decisions are not inconsistent but the results are determined by the provisions of the statute. If the statute does not differ from the common law, if there are no provisions contrary thereto, then the existence of grounds of disqualification of trial judge is not jurisdictional. However, if the statute provides that in certain circumstances a judge shall not sit, then any judgment rendered by such judge in such case is coram non judice and utterly void. 87 A. 867. A statute which in direct and positive terms forbids a judge to sit goes to jurisdiction. Harrington v. Hayes County, 81 Neb. 231, 115 N.W. 773 (1908). Other cases permitting a collateral attack on judgments rendered by judges who were disqualified on jurisdictional grounds

are: Weil v. Lewis, (Texas Civil app. 2 S.W. 2d 566 1928); Gaer v. Bank of Baker, 111 Mont. 204, 107 P.2d 877 (1940) and Horton v. Howard, 79 Mich. 642, 44 N.W. 1112 (1890). If the disqualification is considered as founded on public policy, the act of the disqualified judge is absolutely void: People ex rel. Union Bag Paper Corporation v. Gilbert, 256 N.Y.S. 442, 446, 143 Misc. 287 (1932) and 48A C.J.S. 867.

Judge Leh in his ruling on November 7, 1981, raised the question of waiver of the September 9, 1980 occurrence for the Winslows had not attacked the ruling of November 28, 1980 by original proceeding or appeal. See findings of Fact, paragraph 7. He put it that the Winslows were barred. It has been held that a litigant can waive the right to disqualify a judge by failure to exercise the right. But after the right

has been exercised and disqualification effected, it is beyond the power of the litigant filing an affidavit of disqualification to withdraw the same. Jurisdiction is involved. In Re Woodside Florence Irrigation District, 121 Mont. 346, 194 P.2d 241, 245, 246 (1948).

Looking at the Colorado rules and statutes we find in criminal matters a judge is disqualified to hear or try a case if he is disqualified. Sec. 16-6-201, 1973 C.R.S., the statute. If the motion and supporting affidavits state facts showing prejudice on the part of the trial judge, the judge shall immediately enter an order disqualifying himself or herself. Rule 21(b), C.R.C.P. rule 97 of the Rules of Civil Procedure provides, inter alia:

> "A judge shall be disqualified in an action in which he is interested or prejudiced . . ., any party may move for such disqualification and a motion by a party for

disqualification shall be supported by affidavit. Upon the filing by a party of such a motion, all other proceedings shall be suspended until a ruling is made thereon."

The criminal statute forbids expressly a disqualified judge from hearing or trying the case. If the affidavit shows prejudice on the part of the trial judge, the judge shall immediately disqualify himself, the rule. Thus it is clear that under the doctrines stated, that the acts of a disqualified judge are absolutely void in Colorado in criminal cases.

As regards Rule 97 in civil cases it is difficult to distinguish its provisions from the provisions of the statute and rule in criminal cases. The filing of a Motion to Disqualify suspends all proceedings until a ruling is made. The inference is that the filing of a motion supported by an affidavit or affidavits showing facts disqualifying the judge,

forbids him from hearing or trying the case. Note 2 of Johnson v. District Court, 674 P.2d 952 (Colo. 1984) so indicates.

Further public policy is involved in this matter.

> "Courts must meticulously avoid any appearance of partiality not merely to secure the confidence of the litigants immediately involved but to retain public respect and secure willing and ready obedience to their judgments. Nordlock v. Packard, 45 Colo. 515, 521. 101 P. 787, 790 (1909)." People v. District Court, 192 Colo. 503, 508; 560 P.2d 828, 831, 832.

> "The law is not so much concerned with the respective rights of a judge, litigant, or attorney in any particular cause, as it is, as a matter of public policy, that the courts shall maintain the confidence of the people." U'Ren v. Bagley, 118 Or. 77, 245 P. 1074, 1075, 1076; 46 A.L.R. 1173, 1177 (1926).

The Court concludes that in Colorado the filing of a Motion to Disqualify supported by affidavits showing facts sufficient to disqualify a trial judge, results in

that judge losing jurisdiction and furnishes grounds for collaterally attacking any judgment entered after such filing.

III. Res Judicata.

(a) On January 12, 1982, the Winslows in the midst of the trial did file a Writ of Mandamus in the Supreme Court, bearing number 82SA15. The petition sought a ruling disqualifying Judge Leh from proceeding further with the trial on the grounds he was disqualified by the facts involved in the case at bar and another occurence. The Supreme Court did not issue an order to show cause and denied the petition on January 14, 1982, without opinion and without stating the reasons for the denial. Defendants Williams, et al., who compose the class, contend this denial constitutes res judicata and bars the Winslows form maintaining this action.

A judgment denying a Writ of Mandamus

or for Writ of Prohibition without written opinion is not res judicata unless the sole possible ground of the denial was that the Court acted on the merits or unless it affirmatively appears that such denial was intended to be on the merits. Collins v. City and County of San Francisco, 112 Cal. App. 2d 719, 247 P.2d 362 (1952) (Mandamus); Hoffman v. Silverthorn, 137 Mich. 60, 100 N.W. 183 (1904) (Mandamus); Oak Grove School District v. City Title Ins. Co., 217 Cal. App. 678, 32 Cal. Rptr. 288 (1963) (Prohibition); State ex rel. St. Louis v. Sartorius, 340 Mo. 832, 102 S.W.2d 891 (1937) (Prohibition), and Anno. 21 A.L.R. 3d 206, Sec. 12, page 248, Section 18. The case of Oak Grove School District involves a Petition for Writ of Prohibition to disqualify a trial judge, the petition having been denied without a hearing or opinion.

It was held not to be res judicata on the question of the judge's disqualification. In State ex rel. St. Louis v. Sartorius, 102 S.W.2d 891, 895, the Court stated:

> "A sufficient answer to respondent's contention is that the granting or refusal of original writ of prohibition is discretionary with an appellate court."

In Colorado the exercise of jurisdiction in an original proceeding in the nature of a mandamus is discretionary. McConnall v. District Court in and for Arapahoe County, 680 P.2d 528 (Colo. 1984). And it is also discretionary in original proceedings in the nature of prohibition. Martinez v. Salazar, 137 Colo. 12, 320 P.2d 336 (1958) and City of Aurora v. Congregation Beth Hagodol, 140 Colo. 462, 345 P.2d 385 (1959).

(b) It is contended the denial without opinion or reasons given of a Petition for Writ of Certiorari filed by the Winslows

is res judicata and bars the Winslows from maintaining this action. The Court of Appeals had dismissed the Winslows' appeal for a full transcript of the evidence and proceedings was not furnished as ordered by the Court. The Winslows then petitioned for certiorari and failed to address the matter of the transcripts. They stated they were denied a fair trial before an impartial judge. The matter involved was the denial of the two Motions to Disqualify. One is the same denial to disqualify Judge Leh on November 28, 1980.

CAR 49 of the Colorado Appellate Rules provides that a review in the Supreme Court on Writ of Certiorari is a matter of sound judicial discretion. In this case the petition presented matters not supported by a transcript or other proof of their existence. It seems that the Supreme Court could not do otherwise than to dismiss

the petition. In such circumstances, the dismissal could hardly result in res judicata on the issue of the jurisdiction of the trial court after failing to recuse itself. A simple denial of certiorari without opinion cannot be construed as passing on any of the issues of the litigation and could not be res judicata. Don Mott Agency, Inc. v. Harrison, (Fla. App. 1978) 362 So.2d 56.

The Court concludes that the Winslows are not barred by the doctrine of res judicata from maintaining this action.

IV. Sufficiency of the Affidavit.

The recent case of Estep v. Hardeman, 85SA47, decided September 3, 1985, and reported in Volume IX, Issue 36, page 1236 of the Brief Times Reporter, contains standards by which the question of the sufficiency of the affidavit and transcript in the case can be determined. ". . . a

judge must be free of all taints of bias or partiality," from People v. District Court, 192 Colo. 503, 507; 560 P.2d 828, 831 (1977) "No person is forced to stand trial before a judge with a 'bent of mind,'" from People v. Botham, 629 P.2d 589, 595 (Colo. 1981). ". . . actual prejudice on the part of the trial judge or its mere appearance can require the disqualification of that judge," from People v. District Court, 192 Colo. 503, 508; 560 P.2d 828, 831, 832 (1977). The test applied in Estep supra, is:

> "to be legally sufficient, the motion and affidavits must state facts from which it may reasonably be inferred that the judge has a bias or prejudice that will prevent him from dealing fairly with the defendants."

In the case at bar one of the issues at the hearing of the Motion for Summary Judgment on September 9, 1980 was whether the roads in the Morgan Heights subdivisions

were public roads. The effect of the fact that Morgan County had certified to The Colorado State Highway Department that such roads were county roads was involved. The purpose of the certification was to calculate Morgan County's road mileage in its participation in the Highway Users' Fund and payments therefrom. In his denial of the Winslow Motion for Summary Judgment, Judge Leh remarked he had once been a county commissioner and county attorney, and said:

> ". . . and to put it rather bluntly, the County Commissioners are so tickled to death to get some money from the state they don't often look too carefully at what roads are included, but they look more carefully at what has been excluded, and do it from the standpoint of additional revenue to the county road fund. I think you would have a stronger case if in fact this had been left out of the statement sent up by the state and the commissioners had said, Oh, wait a minute, the roads out there in Morgan Heights should be considered specifically for that purpose . . .

Here Judge Leh went beyond the evidence presented to him in the affidavits and briefs. He commented on his own experience as a County Commissioner and County Attorney. He used such experience to cast doubt on the contentions of the Winslows. His comments concerning the Highway Users' Fund and the certification of the Morgan Heights roads as part of the County road system, based on his personal experience, imputed that the judge was prejudiced in the matter and he would permit his personal experience to color his decision in the case. It was not the fact that Judge Leh had been a County Commissioner and a County Attorney that mattered. It was that he put into the record his views of the issue involved based on his personal experience as such county officials.

In People v. District Court, 60 Colo. 1, 152 P. 149 (1915), it was held that

the disqualification of a judge is conditioned not upon the actual fact of prejudice, but upon the imputation of it. The remarks of Judge Leh showed a "bent of mind" and tended to show prejudice as to the parties and issues.

The Court concludes that the affidavits which incorporated the transcript as part of it, was sufficient to disqualify Judge Leh. The Court lost jurisdiction upon the filing of the motion. The judgments hereinafter mentioned are void and null.

DECREE AND JUDGMENT

The judgment entered October 5, 1982 in case No. 79CV97 in the Morgan County District Court, entitled Williams,et al. v. Winslow, et al., is void and of no force and effect.

That part of the judgment entered on January 3, 1981 is case No. 79CV97 in the Morgan County District Court entitled

Williams, et al., v. Winslow, et al. in favor of Morgan County, Colorado which gives any of the named Defendants in this case relief, including the establishment of any trusts for their benefit, is null and void.

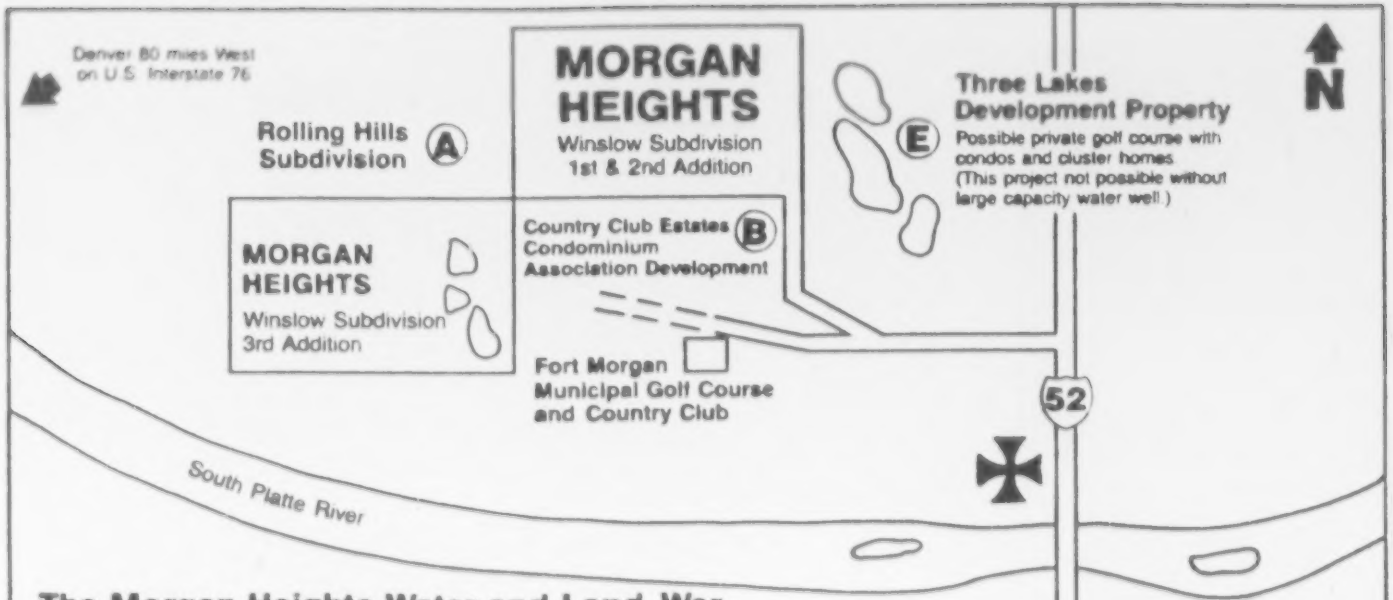
All parties are to bear their own costs.

The Court gives the parties thirty days within which to file such Post-Trial Motions, including a Motion for New Trial, as they are advised.

DONE this 26 day of September, 1985.

BY THE COURT:

George M. Gibson
JUDGE



The Morgan Heights Water and Land War

K.D. Williams, et al v. R.J. Winslow, et al. Morgan Heights Lawsuit filed June 21, 1979

LEGEND:

A Rolling Hills Developer/Housing Company President John Fillingham, Winslow Morgan Heights Lawsuit Adversary

B Country Club Estates Condominium Association Developer Keith D. Williams is Association President; Assistant County Attorney Eric C. Jorgenson, Former Vice President of Association are both Winslow Morgan Heights Lawsuit Adversaries.

C Banker/Developer David E. Steger's Fort Morgan Subdivision. He is a Winslow Morgan Heights Lawsuit Adversary

D Real Estate Broker/Developer Lee O'Neil, Brush Subdivision. He is a Winslow Morgan Heights Lawsuit Adversary

E Three Lakes Development Property. County Attorney E. Ord Wells, Agent, 1963-1981, is a Winslow Morgan Heights Lawsuit Adversary. Robert W. Thomas purchased the Three Lakes Development Property from County Attorney Wells' group on August 15, 1981; County Attorney Wells foreclosed on Thomas at a "Courthouse Step Sale" on November 14, 1985.

Winslow owned large capacity water well site (1,000 gallons per minute).

Special Supplement To THE FORT MORGAN TIMES Fort Morgan, Colorado, Friday, February 26, 1988

WHAT IT'S ALL ABOUT:

The Morgan Heights Lawsuit History

Morgan Heights Case Will Start Tenth Year This June; What Is Real Motivation Behind Bizarre Lawsuit?

By Rainsford J. Winslow

Morgan Heights, located four miles northwest of Fort Morgan, started January 16, 1954 when my wife and I optioned and then purchased the property from L.J. and Gladys Reid. Our home was the first and we moved in July 15, 1955. Between that point and 1971, only six additional homes were built.

One of the people who profited from Morgan Heights beginning in 1971 was Condo Builder/Land Developer Keith D. Williams who purchased a lot from us and built his home where he lives today. He then built five more Morgan Heights homes for others. He liked Morgan Heights. Morgan Heights made him money.

Williams bought a lot from us for $10,000 and a few months later sold it to another party for $14,000. Williams purchased a second lot for $6,750 and a short time later sold it for $10,000. From his testimony, the five homes Williams built for others in Morgan Heights totaled over $400,000 and he admitted that he made ten percent on the properties he sold — another $40,000 or so in his pocket; $47,250 plus for him. He is THE Morgan Heights lawsuit leader.

In November of 1976, the Winslows were awarded two water decrees for Morgan Heights including a well site near the South Platte River and the Rainbow Bridge, which has a capacity of 1,000 gallons per minute. All of this was to assure the Morgan Heights residents would have ample water as the development grew. The decrees were issued by Judge Donald A. Carpenter of the Greeley Water Court.

In 1977, the talk up and down Main Street concerned the Three Lakes by a real estate broker supposedly for a new golf course and cluster homes. The golf course was for those who were not satisfied with the Fort Morgan Municipal Golf Course.

The speculation was that it would be private for members only. The owners of the Three Lakes property include Morgan County Attorney E. Ord Wells. He is manager and corporate agent according to the Colorado Secretary of State.

Also in 1977, condo builder Williams, still a Morgan Heights resident, started negotiations with the Fort Morgan Country Club to buy their property north of the club house adjoining Morgan Heights for condominiums and patio homes. President of the Country Club at the time was Gary Loseke, Williams' son-in-law. There is no evidence I know about that the Three Lakes property has water well capacity for a golf course on site.

In late summer of 1978, there were nearly 50 homes in Morgan Heights. About that time, a Morgan Heights resident told Winslow that there was a committee formed under the direction of Attorney Stanley I. Rosener, also a Morgan Heights resident, to discuss community improvements. This resident later decided that he would drop out of the Rosener committee because of the distructive attitude of Rosener and other members of the committee. Here is part of his testimony, under oath, in the U.S. District Court on January 5, 1984:

"The reason I stopped attending the meetings was it became very apparent to me in the course of several of these meetings in the fall and into well, the summer and fall of 1978 and later, that really the purpose of this organization was to thwart

(Continued Inside)

The Winslow
JUSTICE JOURNAL
"Make Injustice Visible!" — Gandhi

VOLUME 7 FRIDAY, FEBRUARY 26, 1988 NO. 1

Winslows Denied Fair Trial Before An Impartial Judge, A U.S. Constitutional Right

"The cornerstone of the U. S. Constitution, the Colorado Constitution, the judicial system in both Federal and State Courts is the IMPARTIAL JUDGE, who is dedicated to give ANY PERSON a fair shake. My wife Winnie and I were denied this basic right, which is supposed to be GUARANTEED," said Rainsford J. Winslow, developer of Morgan Heights, and who has been involved in a Class Action lawsuit that has gone for nearly nine years.

"The idea of disqualifying a judge for bias and prejudice never occured to Winnie and me until September 30, 1980, when we were in a legal conference with a Colorado Senior Judge. He had come in to give us some suggestions on how to defend ourselves. At this conference were two local attorneys, and an interested Morgan Heights resident, Winnie and I.

"We reviewed a transcript of some remarks made in open court by Judge James R. Leh concerning the Morgan Heights roads and how Morgan County received tax money for these roads since 1973. In the transcript of the hearing, Judge Leh commented that he could understand how the county received the money without realizing it because he had been County Attorney and County Commissioner in Logan County. When the senior Judge read this, and here's the gist of what he said: 'The first thing you do is get Judge Leh disqualified, because he has the point of view of the County Attorney and the County Commissioners, your opponents, when he should be looking at the case as a Colorado District Judge.' We will always be indebted to this Senior Judge for pointing this out, because this led to our short lived victory by Judge George M. Gibson in Washington County on September 25, 1985, more than five years later.

"What happened next was that both attorneys agreed and then on November 28, 1980, Attorney Raymond C. Johnson of Lakewood, who was representing us at the time, filed a motion to disqualify Judge Leh. Judge Leh promptly denied it. All courts have judge disqualification rules to assure that EVERYONE gets a fair deal," explained Winslow.

NO. ONE: He permitted a Colorado attorney to illegally hook up to the Winslows' privately owned sewer system without permission and without paying established fees. Judge Leh REWARDED the attorney with a free sewer tap. **Is this the act of an impartial judge?**

NO TWO: Judge Leh permitted Land Developer/Housing Company President John Fillingham, a Winslow adversary, to go on the Winslows' privately owned sewer system free of paying the established tap fee. **Is this the act of an impartial judge?**

NO. THREE: Judge Leh, in open court, before hearing the Winslow case on the merits, said that the Winslows were the type of people that would do nothing unless backed into a corner and it was likely that if he awarded Winslows their own sewer system, they would probably take everybody off the system. Winslows always dreamed of investing in a sewer system with no customers! **Are These the words of an impartial judge?**

NO. FOUR: At the Morgan Heights trial, Judge Leh heard 62 witnesses through testimony or affidavit, that the Winslows did not damage them nor owe them anything, YET he awarded some of these 62 class members more than $65,000 in "damages." Is this the act of an **impartial judge?**

NO. FIVE: On December 2, 1981, that two of the originators of the lawsuit, Land Developers/Builders Keith D. Williams and John Fillingham, with adjoining and competing subdivisions, Judge Leh said had they wanted to really harm the Winslows, they would not have brought the lawsuit in the first place. They would have just let Morgan Heights "go to pot."

When he said this, Morgan Heights was in compliance with all rules and regulations of the Colorado Health Department, Northeast Colorado Health Department, Colorado PUC, and Morgan County. When the lawsuit was started, Morgan Heights was THE PLACE TO LIVE and was booming, with more lot sales in 1979 than in any other previous year. Since the filing of the lawsuit, the Winslows have not been able to sell a single lot.

NO. SIX: When the transcript of Judge Leh's remarks was received from Court Reporter David A. Martin of the December 2, 1981 hearing, the comments concerning Developers Williams and Fillingham were made omitted. This is called transcript tampering. Four witnesses testified that Judge Leh's remarks about Williams and Fillingham wre made by him on December 2, 1981.

NO. SEVEN: In his judgment against the Winslows dated October 5, 1982, Judge Leh REWARDED Morgan County with a bonus — with nearly five acres of Winslows' Morgan Heights land. It was not an issue and Morgan County was not seeking this land. This is a violation of the U. S. Constitution, Amendment V which says "Thou Shall Not" confiscate private property for public use without compensation. **Is this the act of an impartial judge?**

NO. EIGHT: On March 30, 1981, Winslows' attorney stated to Judge Leh that he was not prepared to defend the Winslows at trial because he was not hired for that purpose. He was hired for another phase of the case. Judge Leh forced him to do so

(Continued Inside)

Judge Rewards A Crime

On October 13, 1980, Attorney Stanley I. Rosener, a Morgan Heights resident and one of the instigators of the Class Action, hooked up to the privately owned Winslow sewer system, which at the time had 12 customers, all of whom paid a tap fee. He went ahead and hired his own contractor to do this on a Sunday, while the Winslows were out of town.

Upon learning this, Winslow filed a criminal complaint against Attorney Rosener charging Second Degree Criminal Tampering, a misdemeanor as per C.R.S. 18-4-506, which can be punishable with one year in jail and a fine of not more than $1,000 or both. The matter was turned over to District Attorney Doyle T. Johns, who refused to prosecute. Judge Leh permitted Rosener to remain on the Winslow system after depositing $1,000 in the Court Escrow Account. This amount was returned to Rosener after the October 5, 1982 Leh Judgment.

This meant Judge Leh rewarded a criminal act, did not report this to the Colorado Supreme Court as per Rule 241.5 as he is required to do. All other Colorado Higher Courts and all Federal Courts know about this attorney misconduct but will do nothing.

Who Are The Winslows?

RAINSFORD J. WINSLOW-Born March 29, 1921 in Milwaukee, Wisconsin. He was an Eagle Scout, served in the U.S. Infantry from 1942-1945, awarded Combat Infantryman's badge, Purple Heart, Bronze Star, European Theatre. Robert N. Winslow Sr., father. He served in World War I as Captain 310th Engineers, European Theatre; 2nd Lt. Robert N. Winslow Jr., brother, killed in line of duty August 1, 1944, World War II.

Journalism graduate, Denver University (1947); Editor Fort Morgan Herald, 1947-1949; investment/real estate broker/free lance writer up through today. Past president Rotary Club, other civic leadership committees; member Faith Presbyterian Church.

WINIFRED W. WINSLOW-Born October 3, 1922 in Denver, Colo. Education: graduate of Denver University in 1944; taught three years Denver school system; one year Fort Morgan. Lt. (jg) Myron G. Wright, father, U.S. Navy, M.D., World War I; Douglas Scott Winslow, son, U.S. Army, Vietnam Service; Bruce W. Hand, son-in-law, U.S. Army service in Vietnam, Germany, Korea.

Mrs. Winslow served on numerous women's club committees, children's and church activities; Elder, Faith Presbyterian Church. Raised one son, two daughters and now helping with six grandchildren. The Winslows have been married more than 46 years.

Why Don't Courts Hear The Winslows

"What we can't understand is that most every Court we've been in gave us one of two two word judgments: MOTION DENIED or CASE DISMISSED.

We understand that this by itself doesn't prove anything, but when we see Courts ignore U.S. and Colorado constitutional law and Colorado Statutes and fail to give us required hearings when we've asked for required hearings. We know this is wrong, but that's what has happened to us over the past nearly nine years," said Rainsford J. Winslow and Winifred W. Winslow, who have been involved in complex Class Action litigation.

The Winslows explained that when they had what they felt was an unfair decision by a Court, they usuall appeal it. The Appeal Court is supposed to give reasons why they either uphold the Trial Court, or reverse it, but seldom did the Winslows get any explanation. Just DISMISSED or DENIED.

The big issue the Winslows wanted to have reviewed was the bias and prejudice of Morgan County District Court Judge James R. Leh, who showed partiality and favoritism to the Winslows' opponents.

The cornerstone of the entire judicial system is based upon the fairness of any judge at any level in any court, and it is a basic principle of due process of law. The Winslows feel they have been denied a fair trial before an impartial judge, and have attempted numerous times to get the matter resolved.

Appeals have been taken to the Colorado Court of Appeals, the Colorado Supreme Court, the U.S. District Court, the U.S. Court of Appeals, and the United States Supreme Court, all Courts several times, with no review by any of these

(Continued Inside)

Commissioners, Winslows Make Move To Settle

Rainsford J. Winslow, Morgan County Attorney E. Ord Wells, and certain Morgan County Commissioners have been disputing issues for nearly ten years and yesterday they came together at a special Court Settlement Conference before Chief Judge Robert Behrman as per an ORDER of Colorado 13th Judicial District Judge Steven E. Shinn. At this Settlement Conference were Judge Behrman, County Attorney Wells, Assistant County Attorney Christina Bauer, Winslow and his wife, Winifred, Winslows' Executive Secretary Jean K. Nielsen, and Commissioners Bruce Bass, Robert Eisenach and Richard Neb.

"I felt very good about this settlement conference we had before Judge Behrman and I think that everybody felt the same way. We had been at loggerheads over several issues over the past number of years, and the main issue that I have had is the refusal of the Commissioners to approve the final plat of the Morgan Heights Third Addition. This may now be resolved and all of the parties are agreeable to working together over the next five months," explained Winslow.

The reason this recent brohaha started was that Winslow filed a lawsuit against the Commissioners and County Attorney Wells in County Court here. This spurred the county to file an injunction Petition to prevent Winslow from representing himself without a lawyer in the County Court. He was stopped from representing himself without a lawyer in the District Court, which was upheld by the Colorado Court of Appeals and the Colorado Supreme Court. "I disagree with what happened, but I accept it," Winslow said.

Judge Shinn issued an order to have this settlement conference after Winslow requested it as per a Court rule. All Courts prefer to settle cases rather than have them go to trial. In this way, the Courts feel, both sides can give a little and win a little.

Winslow and the Commissioners were going to trial before Judge Shinn on the self representation issue in the Morgan County District Court next Monday, with the trial concluding the next day, March 1, 1988. Winslow is facing a Contempt of Court charge because he filed Counterclaims and didn't show up in Court at a hearing November 10, 1987, when he had removed the case to Federal Court. Judge Shinn issued a warrant for Winslow's arrest at the time and Winslow posted a bail bond of $1,000 not to be jailed. Winslow disputes this action.

The basic premise now is that Engineer Jack Odor, who designed and engineered the Morgan Heights Third Addition. will be called in to bring the final plat into conformance with certain regulations the county feels are necessary. Winslow was disturbed because he had received a final plat approval by the Morgan County Planning Commission after he won a victory in the Morgan County District Court before Judge William Calvert, who ruled that the Planning Commission was arbitrary and capricious and said that they must approve the Winslows' final plat of the Third Addition. Assistant County Attorney Bauer indicated that there weren't that many things that needed to be done to the final plat and they had no objection to working with Engineer Odor, and indicated that they, on numerous occasions, have used Odor on their engineering needs. The whole tone of the meeting was of cooperation and not the adversary positions both Winslow and the Commissioners have taken in the past.

Judge Shinn vacated the trial set for next Monday because of a criminal matter, and so now the parties have until July 25 and July 26, 1988. Hopefully the whole matter can be settled by that time, all parties agreed. "I'm glad I pressed for the Settlement Conference, and feel it turned out to be very productive," concluded Winslow.

A Tribute To Honorable George M. Gibson

The Rainsford J. Winslows want to express appreciation to you, sir, for having the courage, and it took courage, to do what you did on September 25, 1985, when you VOIDED all of the judgments against us. We know you spent close to 100 hours studying this case. You cited judge disqualification law in Colorado back to 1885. You utilized 41 cases in 1903, 1909, 1915, 1918 and 1923 all the way up to the present. You cited cases not only from Colorado and most of them were from Colorado, but from Florida, Missouri, California, Michigan, Oregon, Montana, New York, Nebraska, Maine, Kentucky, Ohio and Georgia. You did a masterful job for the state you served many years.

One Fort Morgan attorney who read your Morgan Heights Judgment said: "It never will be overturned. It is one of the most scholarly judgments I have ever read!"

It must have hurt you terribly to have seen the Colorado Court of Appeals REVERSE you.

The State of Colorado lost one of the fairest, justice-minded judges to ever sit on the bench the day you learned of your reversal in this Morgan Heights case, which likely prompted your resignation from the Colorado Judicial system.

Respectfully,
Rainsford J. Winslow and Winifred W. Winslow

The Justice Journal Founded In 1983

By Rainsford J. Winslow
Editor and Publisher

The movie GANDHI actually was the inspiration for THE WINSLOW JUSTICE JOURNAL back in the spring of 1983. Gandhi, probably the most famous leader from India, suffered all kinds of injustices, and did his best to expose the wrongdoing through the press. He said to one of his followers when he was having a particularly bad time, something like this: "The way to correct an injustice is to make that injustice VISIBLE." Having been involved in the Colorado Court system, I've had numerous exposure to injustice and so I put together the First Edition of my little newspaper.

I have published six editions before this one, about one a year sometimes two, whenever I feel an injustice needs to be made VISIBLE. No, we don't have a circulation like the New York Times or the Fort Morgan Times, but I have sent it around to various people across the country and every so often I get a response telling about another type of injustice. One man was telling about how he and his wife had spent $50,000 each on a divorce matter and how rotten it had gotten.

Another call came from a friend in the Chicago area who told about a man who had been deprived of his hardware store because of some obvious shinanigans in the Courts.

Another example was a small publisher who joined up with a large publisher and a short time after the contract was signed, the large publisher completely ignored the agreement. When the small publisher came for a showdown, the big publisher said something like this: "If you sue me, I'll bleed you white." There are all kinds of injustices going on in the Court system today that need to be exposed—made VISIBLE.

A close friend of my daughter supported her husband through five or six years of college. They divorced and guess who pays the alimony? Right, the daughter pays the husband.

Possibly you have a legal horror story that you know about. If you read this edition, you will be able to graphically see what I'm talking about. We have been dealt low blow after low blow. At any rate, read the back page and maybe you can help get some of these injustices made VISIBLE to the point to where the legislators of the State and the Nation will do something to correct some of the things that go on in our Court system.

The Winslow Justice Journal
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Morgan Heights History

(Continued from Page 1)

development in Morgan Heights and to pressure the Winslows into doing what certain members of the committee, which later became named *principle Plaintiffs*, wanted to happen.

"There were many remarks made that bothered me. First of all, these meetings were all—there were many alcoholic beverages served and consumed in sort of a party atmosphere, which I tolerated as long as it appeared there was some movement toward getting some things done, but then, as I say, the nature of things changed. It became more of a vendetta type effort against the Winslows and against development in the community in terms of sale of lots and so forth. Comments were made repeatedly, such comments as paraphrasing, we need to shut him down, we need to cease development in this area, that will get his attention, and a particular comment, which may it please the court, contains an obsenity...I'm sure the court's heard obscenities before. One comment that—really I attended no meetings after this comment—and the comment was made by Stan Rosener, an attorney in the area, who was a principle in starting this whole thing, that he sure looked forward to this opportunity to F_____ the Winslows in court.

"The term "Lis Pendens" was used and at that time I didn't really understand the significance of it, but comments were repeatedly made by members of that committee that if they could just get this of record, this Lis Pendens, or Luey could otherwise cause notice to people that they were considering the purchase of property in the area, that that would definitely stop development in the area," said the Morgan Heights resident witness.

In the spring of 1979, developers Richard B. Paynter and Lawrence Floyd, both Morgan Heights residents, together with Denver Architect Edwin Warner, planned a 15 unit condominium complex in Morgan Heights. I gave them a verbal option on the property. Architect Warner built a scale model of the development for sales purposes and it was presented to Broker/Realtor Stan Paynter of Brush, who started getting letters of intent to buy condos in Morgan Heights. About the same time, developers Paynter and Floyd purchased by contract, eight building sites in Morgan Heights for single family spec homes.

On April 24, 1979, the Winslows put together a meeting to establish an improvement district with the idea of constructing paved roads in Morgan Heights and fire hydrants. The improvement district plan was prepared by then Attorney Peter Alpert, a resident of Morgan Heights, and now a District Judge here.

At the conclusion of the presentation for the improvement district, Attorney Rosener announced to the residents present that the Winslows were obligated to pave all the roads in Morgan Heights at their expense, which was not true. (Even Judge Leh admitted that this was not correct later). At any rate, the meeting became a "shouting and screaming match" and the lawsuit was orchestrated and filed on June 21, 1979 by 19 families. Over 80 residents elected not to sue.

The next day, the Lis Pendens was filed on all of our Morgan Heights property, including our home and including the condominium site and units were planned by Paynter and Floyd and architect Warner. This did stop the growth of Morgan Heights — COLD, up through today.

The claims were that the Winslows did not have an adequate water system, and sewer system, even though they met the requirements of all Health Agencies and still do, and that the roads were not maintained properly even though the county was getting tax money for these Morgan Heights roads, but refused to maintain them.

Our first attorney we had was from Denver. When he had all of the facts before him, he said something like this:

"It appears to me that there are certain parties against you who want to make an 'investment in the court system.' This is where the big guy goes after the small guy with a lawsuit, figuring to run the little guy out of money with attorney fees and costs so the big guy can get the little guy's property for ten cents on the dollar. A number of Denver legal firms do this, but our firm does not condone such litigation."

Here is what the attorney wrote as part of a settlement proposal BEFORE the lawsuit was filed: "Frankly, it is our belief that this litigation is not being filed primarily for the benefit of the Morgan Heights residents...We believe there exists a limited group of people whose primary interest is obtaining ownership of the water rights, which are owned personally by the Winslows. Specifically, these individuals do not intend to use those water rights for the benefit of the residents of Morgan Heights, but rather intend to utilize the extra water represented by these rights for the possible development of other properties which are totally unrelated to Morgan Heights. (See Schematic Map of Morgan Heights).

At this point, Keith D. Williams was still negotiating with the Fort Morgan Country Club over the adjoining land to Morgan Heights, for his condos. Jake Pribble was processing with his Rolling Hills development directly west of Morgan Heights. The late David E. Steger had a development in the southeast corner of Fort Morgan and real estate broker/developer Lee O'Neil had a real estate project started near Brush. These four developers are Morgan Heights lawsuit leaders.

The judge assigned to this was James R. Leh of Sterling who we believe was biased and prejudiced against us from the very start.

"One of his first ORDERS was to certify the Morgan Heights Class, which forced more than 100 Morgan Heights residents into a lawsuit which only 19 families wanted. Judge Leh FORCED our three children to be opponents to us in this lawsuit. He forced two of our partners to be in this lawsuit against us. He forced close friends and business associates into the lawsuit against us. He forced our own attorney into the lawsuit against us.

We attempted eight times to have Judge Leh disqualified before he finally withdrew from the case, but this came AFTER several devastating Judgments. We spent nearly the next three years going from one court to another trying to get help with no luck. Finally we were given relief in Washington County when Judge George M. Gibson ruled that Judge Leh was biased and prejudiced and VOIDED all the Judgments against us.

We knew that our opponents would appeal, so we immediately set about to settle the case. The opponents did appeal, but we were successful in getting 102 of the Class to vote for our settlement proposal. About 40 didn't object to it.

This is 85% for settlement or not objecting, with only 15% objecting. Of the 15%, only EIGHT Class Members refused to settle, and Class Attorney Robert J. Dyer went along with them. How is it possible for eight Class members to hold up a settlement that about 140 who want to settle or don't object to the settlement? This doesn't follow the American System of the majority rules.

Next the Colorado Court of Appeals reversed Judge Gibson and the Colorado Supreme Court refused to review our Petition to Reconsider. Now we are right back to where we were nearly four years ago. Now we're seeking relief through a Habeas Corpus Petition, but we can't get heard in court.

We started out this lawsuit with attorneys and had attorneys representing us for several years and spent multi-thousands. Then we could no longer afford to pay $110 an hour to lawyers and so we started representing ourselves. We received excellent advice from a few attorneys while we proceeded on our own.

What is the motive for all this? We still believe that certain parties are after our land and water rights. What is really disturbing is that all of the Courts, both State and Federal, know what has been going on out here in Morgan County, yet so far no one is letting us in the court room so we might be heard to correct this terrible injustice.

Why Won't Courts Hear Winslows?

(Continued from Page 1)

Court on this "fair trial/impartial judge" issue, with one exception.

There is a legal right called Habeas Corpus. This is supposed to give anyone who has been restrained of his or her liberty more so than the public generally, a chance to be heard on the wrongful action of a State Court. The Winslows have attempted to be heard on Habeas Corpus Petitions in the Denver District Court, the Colorado Supreme Court. They attempted to have the U.S. Supreme Court require a hearing in a Colorado Court. They've taken the matter three times to the U.S. District Court, but all they got is: CASE DISMISSED, no hearing, no chance to get at the issues concerning what Judge Leh has done to them.

The Winslows filed what is called a collateral attack on this fair trial/impartial judge issues in the Washington County District Court before Senior Judge George M. Gibson. On September 25, 1985, Judge Gibson ruled that Judge Leh was biased and prejudiced against the Winslows and VOIDED all judgments against them. He explained in intricate detail why he ruled that way, following United States Supreme Court and Colorado Supreme Court law. Naturally, the Winslows were elated!

The Winslows' opponents filed an appeal in the Colorado Court of Appeals to overturn the Gibson Judgment. On August 6, 1987, the Winslows' victory was reversed with an OPINION which contradicted United States and Colorado Supreme Court law. The Appeal Court ignored the Winslows' Cross-Appeal, which went into further detail on the bias and prejudice of Judge Leh and showed conclusively that Judge Leh was biased and prejudiced from the start. This meant the Winslows were denied a fair trial before an impartial judge.

The Winslows took a Petition to the Colorado Supreme Court for review, but were again dismissed with the single word: DENIED.

All the time this was going on, the Winslows attempted Habeas Corpus hearing, which requires a formal evidentiary hearing with witnesses in either a Colorado Court or in a Federal Court. They were not given this right. They never got in a courtroom to prove their Habeas Corpus Petition of liberty restraint. Why wouldn't these Courts permit a hearing? Why couldn't the Winslows bring forward witnesses and evidence to prove that they were denied a fair trial before an impartial judge?

Morgan Heights Class Speaks; Colorado Supreme Court Listens

On November 23, 1987, Morgan County District Court Judge Ralph H. Coyte issued an order requiring that Morgan Heights Class members be assessed $1,415 per lot for legal fees, which contradicted an order by Morgan County District Court Judge Marvin W. Foote, who issued an order on May 24, 1984, which said no Class Member would be assessed by lot..

The Colorado Supreme Court accepted a petition filed by Rainsford and Winifred Winslow on behalf of the Class and may possibly give relief to the Morgan Heights Class. All of the briefs have been filed and a decision may come forward any time within the next few days or few months.

It is believed that one of the reasons the Colorado High Court accepted this petition is because of the multitude of letters of protest to this legal fee order by Judge Coyte. What follows are excerpts of the letters, minus the names to preserve privacy of the individuals who complained:

Class Members 1 and 2

"We have consulted several long-time local real estate brokers and have copies of letters therefrom who have stated that the lawsuit has caused at least a 10% to 20% devaluation of the property (in Morgan Heights). Therefore, the $1,415 fee to us seems totally out of order.

This case has caused us extreme personal grief and mental harassment. We have lost very close friends in the process...for the above reasons, and many more too lengthy to detail, we request you review your decision and consider the unnamed-plaintiffs' plea that we not be assessed for this litigation which has benefited us in no way whatsoever and has seriously harmed us in many ways."

Class Members 3 and 4

"Petitioners have sustained substantial damages and monetary loss as a direct result of this action. The entire area has changed from a community to a highly polarized fragmentated encampment. Homes are not saleable, property values are the lowest ever due to the stigma the lawsuit has attached to the area."

Class Members 5 and 6

"The question of me benefiting from this lawsuit is absurd! My home is worth thousands of dollars less as a result of the lawsuit, and I should pay for benefits derived from it? This doesn't make any sense to me. Clearly, if benefits derived by Morgan Heights people were to be a basis for attorneys' fees, they (the attorneys) would owe us money. Thank you for your representation, but, no thanks!"

Class Member 7

"This Attorney has been denied due process of law by purported Order of this (Morgan County District) Court dated November 23, 1987, under the Fifth and Fourteenth Amendments to the United States Constitution and Article II, Section 25 of the Constitution of the State of Colorado."

Class Members 8 and 9

"If the Class Action Attorneys were intending to benefit members of the Class through their services, then they would have settled the lawsuit based upon the Winslow proposal which 85% of the people living in Morgan Heights wanted them to do. Documents on file in the Washington County Court case indicate that the persons living in Morgan Heights requested the attorneys for the Class to settle the litigation in accordance with the proposal which had been filed by the defendants Winslow...that the attorneys failed or refused to do so and followed the wishes of the minority of the class."

Class Members 10 and 11

"As you can see, we lost a great deal of money ($110,000) over this lawsuit. Not listed are the condominiums we had planned to build, but were stopped by this lawsuit.

Before the lawsuit, property was easy to sell. We were satisfied, our customers were satisfied, both with Rainsford Winslow and Morgan Heights. Now you tell me, or show me how we've benefited from Robert J. Dyer's services. THERE IS NO, AND THERE WILL NEVER BE ANY BENEFITS FROM THIS VINDICTIVE LAWSUIT!"

Class Member 12

"I did not receive any benefits from the so-called awards. In fact, I lost money when I sold my residence located in Morgan Heights as a direct result of the lawsuit. Judge Foote stated he would not assess any lots, why do you (Judge Coyte) intend to do so?"

Class Members 13 and 14

"We are raising our voice in protest of Judge Ralph H. Coyte's order on Monday, November 23, 1987 that each non-defendant lot owner be assessed $1,415 in attorney fees. This would be in contradiction of Judge Marvin W. Foote's order on May 24, 1984, which was our understanding when we bought the above property. (Lot 18)?"

Class Members 15 and 16

"In August, 1982, we purchased our home at 100 Bachar Dr., in Morgan Heights for $72,000 and put $20,000 down. In August, 1986, we sold our home...for $60,000 and only after signing an affidavit for the purchaser stating we would pay for the legal fees if there were any concerning the lawsuit in Morgan Heights. We also had approximately $6,000 in improvements on our home in Morgan Heights during the time we owned it. This brought our loss on the sale of our home in Morgan Heights to approximately $18,000.

It appears to us that you people running the courts choose to ignore the above facts in making your decisions."

Class Members 17 and 18

"We have lived in Morgan Heights for 29 years and as far as we are concerned we are not receiving any more benefits now from roads, water and sewer than we ever did. We did not want anything to do with this class action, and if this is a free country, why are we drawn into something we wanted nothing to do with? Let the ones who started this action pay the attorney fees."

Class Members 19 and 20

"The lawsuit has caused the value or our lot to go to almost nothing, and it is not possible to get a buyer. We feel that the people who brought the lawsuit should pay for it. We believe it has stopped the development of Morgan Heights and is very unfair."

Class Members 21 and 22

"How our courts can allow this to happen is unbelievable, and we will forever feel that we have a prejudiced court system in Morgan County. We had no voice in hiring the attorneys, no voice in what they were doing and no voice in their conduct and feel we have NOT benefited from any judgment — in fact our property is worth much less now than before the suit was filed, so we feel we owe NO attorney fees."

Class Members 23 and 24

"There are no benefits from this action; I have as a contractor, lost new home sales, my own present home according to the lender, probably wouldn't appraise for anything over $100,000 even though my cost and value of improvements is over $150,000.

This action doesn't even have the dignity to be in a lawsuit class. If justice is served by (the Judge Coyte) order (that is, by the way, in direct conflict with Judge Foote's May 24, 1984 hearing statement), then all of our great ancestors would turn over in their graves. Let us perhaps try the People's Court on TV, it would probably be a lot closer to the traditional old fashioned form of American Justice. I and others have maintained repeatedly from the start, that we are not a part of and want no part in this fiasco."

Class Member 25

"I think it is utterly ridiculous that in the United States of America a person is forced into a lawsuit that they do not want to be involved in. I have not or will not benefit from this lawsuit, in fact it caused the value of my home to decrease when I sold it. Why is this lawsuit allowed to continue and ruin so many lifes (sic)."

Class Members 26 and 27

"If we are members of the class, why were we NOT notified of this attorney fees hearing, and given a chance to present our situation. We were not given any notification of this hearing. Throughout this entire case, beginning in 1981, we were kept in the dark. Our Attorney, Mr. Dyer, has not notified us of any 'hearings' or very few meetings. We would like to know why we are required to pay attorney fees to our attorney when he did not invite us to the class meetings. He only invited the chosen few. We were not given any chance to have any input as to any part of the lawsuit. He would not discuss any aspect of this case with us from the beginning. Now the court has ordered us to pay attorney fees for an attorney who would not respond to us in any way."

Class Members 28 and 29

"On May 24, 1984, Judge Foote stated, and I quote part of this, 'The Court does not propose to assess any lots. The court is going to apply what is called the common fund doctrine. Namely, that any attorney fees awarded shall be taken from the total amount of monies received in satisfaction of the judgment.' Had the (absent Class Member) realized that attorneys' fees would be awarded any other way than this common fund doctrine, (we) are sure that they would not have been as complainsant (sic) and would have been more vocal during this entire case."

Class Members 30 and 31

"We have definitely NOT benefited from this class action suit. In fact we have been forced to assume additional expenses over and above what we had anticipated just to keep our property at the same level that it was when we purchased it in 1978 and prior to the lawsuit. Yes, we are strongly objecting to this additional (legal fee) expense."

Class Members 32 and 33

"We bought our property in October, 1963, and have never taken part in any actions by the plaintiffs and have continually requested elimination of our names from the case. No financial awards of any kind were made to us by any of the court proceedings.

We have the feeling that we are receiving the kind of treatment in this case that we could receive from courts in countries behind the Iron Curtain in Europe. We do not believe that we are being treated as lawful American citizens in this Class Action Case."

Class Members 34 and 35

"So this is justice? You are spending my money! We didn't have anything to say in this matter!

We are a young family, both working parents, trying to make ends meet. This day and age in our economic crunch we barely can make every months' payments. Living in Morgan Heights is even harder financially, to live. However, we'd like to stay here as we have built our home, with help, and feel we have a good investment (if the lawsuit will ever be settled without our financial help).

Have a heart judge, and let the 19 named plaintiffs fight and pay for their own gripes."

Class Members 36 and 37

"We do not see where we received any benefits from this class action. In fact we suffered a very severe economic loss on our property in Morgan Heights because of the stigma of this lawsuit. The job situation forced us to move and sell the house at a loss in excess of $10,000 because potential buyers didn't want to get involved in the suit.

The attorney in this case never represented us. We did not receive any written communication from Attorney Dyer in this case. In five years we have only had one opportunity to find out what was going on from this attorney. We attended the meeting, which turned out to be a farce. As soon as the discussion turned to hearing the desires of anyone except the small group of named plaintiffs (those who brought the lawsuit in the first place) the meeting was adjourned. We repeat, we were not represented by this attorney, and in fact he acted against our wishes."

Class Member 38

(WESTERN UNION MAILGRAM): "Regarding Williams et al v. Winslow, protest recent order regarding attorney fees. Inappropriate, inequitable, illogical, unfair, equal fees but unequal benefits/representation."

Class Member 39

"As a taxpaying, law abiding citizen of the U.S.A., I am appalled and disgusted that a handful of vindictive people and an attorney claiming to represent my views, can force me into a legal charade for nine long miserable years, can force me to accept the so called benefits? And can force me to pay for this despicable action? Thanks, but no thanks!"

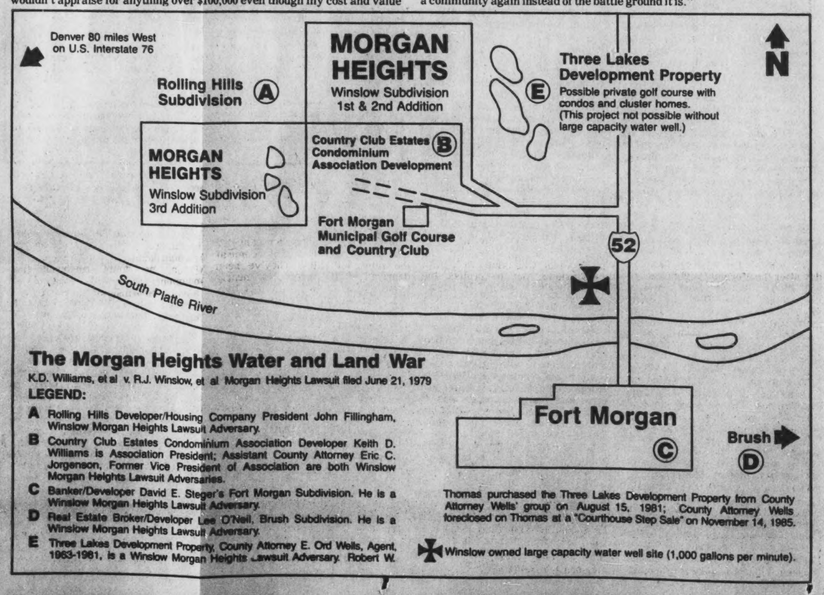
Class Members 40 and 41

"For Mr. Dyer to persist in his misrepresentation of the class members and to additionally seek to recover attorney's fees is reprehensible. I feel that his actions constitute legal malpractice.

In summary, as a Morgan Heights landowner, I feel that I have in no way benefited from the actions of STUTZ, DYER, MILLER and DELAP, and instead have only been harmed by their handling of this lawsuit. To assess me any amount for legal fees will completely disregard the true conduct of Mr. Dyer in this lawsuit. His energies and motives throughout the case have been to advance the position of the named plaintiffs, and during this process he has intentionally inflicted emotional and financial damage against me as an unnamed plaintiff. His attempt to recover legal fees should be directed only towards those named plaintiffs who supposedly benefited from the suit. My wife agrees with me."

Morgan Heights Class Member Comment

Jody Hott said it best at a class meeting some time ago: "Wouldn't it be wonderful if this legal mess would settle, so we could make Morgan Heights a community again instead of the battle ground it is."



The Morgan Heights Water and Land War

K.D. Williams, et al v. R.J. Winslow, et al Morgan Heights Lawsuit filed June 21, 1979

LEGEND:

- **A** Rolling Hills Developer/Housing Company President John Fillingham, Winslow Morgan Heights Lawsuit Adversary.
- **B** Country Club Estates Condominium Association Developer Keith D. Williams is Association President; Assistant County Attorney Eric C. Jorgenson, Former Vice President of Association are both Winslow Morgan Heights Lawsuit Adversaries.
- **C** Banker/Developer David E. Steger's Fort Morgan Subdivision. He is a Winslow Morgan Heights Lawsuit Adversary.
- **D** Real Estate Broker/Developer Lee O'Neil, Brush Subdivision. He is a Winslow Morgan Heights Lawsuit Adversary.
- **E** Three Lakes Development Property, County Attorney E. Ord Wells, Agent, 1963-1981, is a Winslow Morgan Heights Lawsuit Adversary. Robert W. Thomas purchased the Three Lakes Development Property from County Attorney Wells' group on August 15, 1981; County Attorney Wells foreclosed on Thomas at a "Courthouse Step Sale" on November 14, 1985.

✠ Winslow owned large capacity water well site (1,000 gallons per minute).

WE ACCUSE!

The Dreyfus Case

In 1894, French Captain Alfred Dreyfus was wrongfully charged with treason, tried with rigged evidence by a French Military Court, and sentenced to Devil's Island for life. A few years later, it was determined that there were six or seven conspirators, who framed Dreyfus. The matter came to the attention of French Author Emile Zola, who wrote a front page editorial entitled **I ACCUSE!** Zola told the truth about what happened to Dreyfus and named the conspirators. After the I ACCUSE editorial was published, the case was given world-wide publicity, which prompted responses from many countries including a protest by Queen Victoria of England. The biggest protest of all came from the people of France, who demanded that Dreyfus be returned from Devil's Island and freed.

This prompted a meeting by the prime Minister of France. The top General urged that Dreyfus not be freed because this would make the French Army lose credibility with the people. He thought that it was better that one man suffer rather than the entire country. Fortunately, the Prime Minister didn't accept this theory and Dreyfus was returned and given his freedom all because of Emile Zola, a fearless publisher, who printed I ACCUSE on his front page, but most of all the multitude of protest letters from THE PEOPLE OF FRANCE demanding that Dreyfus be freed since he wasn't given a fair trial before an impartial tribunal. This case led to French judicial reform to prevent further injustices.

WE ACCUSE **Chief Judge James R. Leh** of the Colorado 13th Judicial District for not disqualifying himself on November 28, 1980. You caused us nearly nine years of grief and suffering and pain because of your biased and prejudice actions.

WE ACCUSE **Attorney Robert J. Dyer III** for confiscating illegally nearly $4,000 of our money when we were attempting to go to the Colorado Supreme Court in January of 1984, nearly four years ago. You knew, you had to know, that you had no authority to do this act. You have caused us financial trauma and grief beyond discription.

WE ACCUSE **Judge George McNamara** of fining us $1,000 and a 20 day jail term when we were served financial disclosure papers improperly and you knew we were improperly served. We do thank you for withdrawing from the case and canceling the contempt order saying that it was: "Too drastic."

WE ACCUSE **The Three Colorado Public Utilities Commissioners,** who were in office between 1978 and 1982 for forcing our small utility company to lose money, when it is your obligation to make certain that we make a little money so we can pay our bills.

WE ACCUSE **Assistant Attorney General Neil Tillquist** who attempted to prevent us from representing ourselves without lawyers in any court in Colorado, but we thank the Colorado Supreme Court for not permitting such a travesty. They denied your petition four days after you filed it. Why would you do such a thing? Certainly we filed a number of cases in the various Colorado and Federal Courts, but that is our right so that we can protect ourselves and that's why we filed the many cases we have.

WE ACCUSE **Judge John L. Kane Jr.** of the U.S. District Court in Denver of ignoring all the facts you were presented by witnesses and evidence that showed Judge James R. Leh was biased and prejudiced against us. Why would you ignore the testimony of the six witnesses and the 15 exhibits presented and accepted by you? We do appreciate the fact you gave us the opportunity to make a record which can be presented to another Colorado or Federal Court sometime soon.

WE ACCUSE **Judge Jim Carrigan** OF NOT PERMITTING US TO GET A HEARING ON THE WRONGFUL Lis Pendens lien this past summer when we attempted to have the wrongful legal cloud removed from our property so that we might sell it. Why did you deny us this basic right to be heard?

WE ACCUSE **Judge Zita Weinshienk** of the U.S. District Court in Denver of dismissing our case less than one week after we filed it before we even got a hearing, which we had sought. We do appreciate the fact that you granted the motion to disqualify you and have since refused to take any other cases in which we have been involved.

WE ACCUSE **Chief Judge Sherman Finesilver** of dismissing two Habeas Corpus petitions we filed without one fraction of a second in your courtroom. Why? Federal Statute Title 28 USC 2254 requires a hearing when no hearing was had in the State Court on the issues. There are also U.S. Supreme Court cases that require a hearing under the circumstances we are in. You said that one of the main reasons you denied our petition for Habeas Corpus relief was that we were not in physical custody. We gave ample case law to show that wasn't required and all that need be shown is that we have suffered restraint of liberty more so than the public generally. Your Honor, we have!

WE ACCUSE **Senior Judge Alfred A. Arraj** for dismissing our Habeas Corpus petition again on the basis that we were not in physical custody like prison. We showed you through pleadings and U. S. Supreme Court case law, like we did Judge Finesilver, that the basis of Habeas Corpus now is if the person's liberty restraint is greater than what the public suffers generally. You would not permit an evidentiary hearing where we could have witnesses and produce evidence.

WE ACCUSE **Denver District Judge Steven Philips** for dismissing our Habeas Corpus petition which we filed last July. We sought a hearing as per court rules, but you gave us no hearings. You just sent out an order that said: DISMISSED. Colorado Habeas Corpus statutes require a hearing, but you gave us none.

WE ACCUSE **Senior Judge Ralph H. Coyte** of not permitting the Winslows to examine Class Attorney Robert J. Dyer, who we had subpoenaed and was in court to testify regarding why he wrongfully garnished nearly $4,000 of our money. You wouldn't let us get at the truth, because he knew and we could have shown that he knew this was wrong.

Winslows Denied Fair Trial

(Continued from Page 1)

anyway. **Is this the act of an impartial judge?**

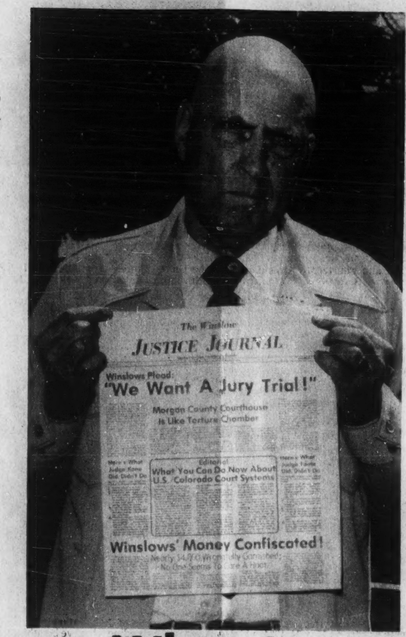
NO. NINE: On June 22, 1979, the day after the Morgan Heights lawsuit was filed, a Lis Pendens lien was placed on all of the Winslows' Morgan Heights property, including their subdivided lots and home because there was a claim the Winslows owed the Morgan Heights residents an "80 acre park." Judge Leh later determined such a claim was groundless, but he still would not remove the Lis Pendens Lien from the Winslows' property even after several attempts. This meant the Winslows could not sell any lots, not their home, nor borrow on their property.

NO. TEN: Even though Judge Leh acknowledged that the county had been getting money for the Morgan Heights roads, he still required the Winslows to upgrade certain roads as per the specifications of Engineer Cecil J. Osborne, who estimated the cost at less than $20,000. Then, Judge Leh imposed a $150,000 Lien on the Winslows' Morgan Heights property; $130,000 more than what the roads would cost. This excessive bond, the Winslows feel, was issued to punish the Winslows, not to protect the Morgan Heights residents or Morgan County.

Are These examples cited above, the acts of an impartial judge? In my opinion, these acts are those of a judge wanting to punish us for no reason. They are beyond the appearance of impropriety. They are beyond normal bias and prejudice. No person or persons should have to suffer like Judge Leh forced us to suffer.

What is hard to understand is why one of the higher Courts has not done something about this and given us a new trial, because they all know precisely what has been pointed out here as to what Judge Leh did to us? Why are they permitting this? How can the Colorado Court of Appeals, the Colorado Supreme Court, and all Federal Courts including the United States Supreme Court permit this?" Rainsford J. Winslow asks.

Winslow Uses Freedom Of The Press



What Is Habeas Corpus?

THREE—The Winslows did not get a fair trial before an impartial judge. This has been explained elsewhere in this issue of THE JUSTICE JOURNAL. Judge Leh was biased and prejudiced against them and two Colorado District Judges determined so and the evidence proves it. **This is a restraint of liberty not suffered by the public generally.**

FOUR—The Winslows have not been free to travel like they might desire to do. They must be close to home and have had to be close by for the last nine years since they have been on call in many courts to try to get relief from the quagmire into which They were thrust. **This is a restraint of liberty not suffered by the public generally.**

The Winslow cases were filed against Judge James R. Leh and Judge Ralph H. Coyte, but neither of them responded to the petition, nor did any court mail the petitions to these judges demanding a response. What could they respond to? Everything that was in the petition was verified and there were documents to prove every point made.

Habeas Corpus relief is specified specifically in the U.S. Constitution and the Colorado Constitution, but neither the Colorado or Federal Court judges that the Winslows have been before have given them these rights, they haven't been allowed to bring forward evidence or get witnesses to prove what happened. Judge John L. Kane Jr. of the U.S. District Court did let the Winslows present evidence with witnesses and this conclusively proved that we did not get a fair trial, but he did nothing except dismiss our case and award attorney fees to our opponents. The record we made before Judge Kane on January 5, 1984 showed precisely what happened, but he would do nothing. Judge George M. Gibson, no doubt reviewed the documents from the Kane Court and he gave the Winslows the relief they were seeking — VOIDING all the Leh judgments, but he was reversed.

All of the laws concerning Habeas Corpus are most specific! They point out that Habeas Corpus relief is a sacred right to unchain somebody wrongfully chained. The Winslows have been wrongfully shackled and have been attempting to "hacksaw" these judicial shackles, but they can't seem to do it. Nobody listens.

"How our courts in Colorado can ignore what is spelled out clearly in Colorado Statutes, Federal Statutes, and in U.S. Supreme Court cases, and both constitutions ignore all of this is beyond me. However, I know there is some judge out there that will look at our case and shake his head and say: 'The petition for Habeas Corpus is GRANTED!'

"We hope this happens soon," said Rainsford J. Winslow.

The Winslow Case

The Winslows are not on Devil's Island, but they are in COLORADO JUDICIAL CUSTODY. They are being restrained of their liberty more so than the public generally. They've had a wrongfully placed Lis Pendens Lien on their property for nearly nine years, which means they can't sell their Morgan Heights property or their home or even borrow against it, even though it's free and clear. They've had nearly $4,000 of their money wrongfully confiscated and the court will do nothing about it. They were not given a fair trial before an impartial judge. Most people enjoy having the doorbell ring, not the Winslows. They fear it might be a Process Server serving another summons or subpoena, or a Court Order for a court appearance. Most people enjoy going to the mailbox, not the Winslows. They fear the mailbox will contain an Order from some court denying a motion they made or setting up another Court appearance. Seldom can they plan in advance because of some sort of restriction by a Court or a judge. They have fought back as best they know, using the laws, rules and courts to protect themselves.

They have attempted to be heard on the fair trial/impartial judge issue but they have been denied. The only court that looked at this issue was in Washington County District Court headed by Judge George M. Gibson, who determined that Judge Leh was biased and prejudiced and VOIDED all Judgments against them. What the Winslows seek now is to have some court give them a hearing with witnesses and evidence to prove what's happened so that they can cut the shackles that bind them.

They would hope that this special edition of THE WINSLOW JUSTICE JOURNAL will spur some letters of protest that can be used to the powers that be. It was the letters that came in from the people of France AFTER the I ACCUSE article was published that got the Prime Minister to return Dreyfus to freedom. Not only is this going to help the Winslows, but it might help you and others who are put into a judicial trap concerning a traffic violation, a child custody case, a divorce, or whatever. Letters might help get Colorado Legislators to establish some safeguards for the people.

WE ACCUSE **Class Attorney Robert J. Dyer III** of filing two false affidavits in the Colorado Court of Appeals. You knew they were false, but filed them anyway. We believed that those who signed the false affidavits didn't realize what they were doing. You did.

WE ACCUSE **Colorado Court of Appeal Judges Metzger, Crisswell, and Silverstein** for not reviewing our Cross-Appeal in this Morgan Heights case. Had it been reviewed, there is no way you would have reversed Judge George M. Gibson's judgment dated September 25, 1985. You cannot mean that you condone what Judge Leh did to us. You denied us due process.

WE ACCUSE **The Commissioners Of The Colorado PUC** who forced us to disolve our corporation so that we could defend a complaint against our small water company. Dr. Juergen Lehmann had every right to make the complaint he did, but you people did not have the right to require we have an attorney to represent our corporation when there is a Colorado Statute that permits a corporate officer to represent the corporation if the amount at issue is less than $5,000. You violated this Colorado Statute and this harmed us.

WE ACCUSE **Judge Warren O. Martin** of the Denver District Court where we filed a complaint against the three PUC Commissioners for violating the law. You, Judge Martin, had all the facts, and when we attempted to get a hearing before you, you dismissed the case—no hearing. No Day in Court for the Winslows. This is a violation of due process.

WE ACCUSE **James T. McDowell and Don Clifton, Board Members of the Colorado Board of Assessment Appeals** for the unfair treatment you gave us when we presented our property tax appeal to you on December 23, 1987. We had five witnesses subpoenaed and in the hearing room, ready to testify, but you would not permit us to examine these witnesses as we wanted so as to build a foundation for our case.

You wouldn't permit us to give an offer of proof as to what these witnesses would have said. When I examined a Deputy County Assessor and had him read the law into the record concerning how appraisals must be made, he did and admitted he didn't follow the law. You, Mr. McDowell, said something like this: "That's okay, no problem. We ignore this law because in agricultural areas it would be difficult to follow." You, Mr. McDowell, say the laws don't stand in Colorado? Then, you deny our appeal. You didn't give us a fair hearing, Mr. McDowell and Mr. Clifton.

And why, Mr. Clifton, were you appointed in the first place? Did you reveal to Governor Roy Romer, who appointed you, that you are a former county commissioner? The county commissioners are always the opponent in a taxpayer appeal before you. You, Mr. Clifton, have a built-in bias and should resign now!

WE ACCUSE **James T. McDowell and Don Clifton, Board Members of the Colorado Board of Assessment Appeals** for ignoring the fact that our Morgan Heights lots could not be sold at any price starting in 1979 up through 1984. Yet, you ignored this and permitted the Morgan County Assessor to jump our taxes from $1,300 up to nearly $7,000, more than a 500% increase. You, Mr. McDowell, said something like this: "YOU CAN sell your property with a Lis Pendens lien on it or you could utilize these lots for pasture." Who, Mr. McDowell, in his right mind, would buy a piece of property with a Lis Pendens on it? Your idea about making these unsaleable Morgan Heights lots into a pasture is absurd. The property is zoned for residences, not for cattle. How do you think the Morgan Heights residents would react to a pasture filled with horses and cattle roaming around their $100,000 to $200,000 homes?

WE ACCUSE **All Of The State And Federal Courts** we have been in for not permitting us to have a jury of our peers, as we requested, which is required by the U. S. Constitution and the Colorado Constitution. We've never been granted a jury yet in all the cases we filed fighting back. Why do you ignore this jury right? Hopefully the Colorado Legislature will put some teeth into the laws to require juries when they are demanded.

WE ACCUSE **The Appropriate Justices** of the Colorado Supreme Court for denying us many petitions, which is their right to do, but when they have seen all we have presented here in this issue of the WINSLOW JUSTICE JOURNAL, and do nothing, we feel that this is wrong. We still have the right to disagree. We appreciate the small victories we have received at your hands and hopefully you will yet grant relief to the Morgan Heights Class and even dismiss the whole case. You could stop this quagmire if you would.

VERIFICATION

STATE OF COLORADO)
COUNTY OF MORGAN) ss.

RAINSFORD J. WINSLOW and WINIFRED W. WINSLOW, of lawful age, being first duly sworn upon their oaths, depose and state as follows: That they have gathered, written, and edited this edition of THE WINSLOW JUSTICE JOURNAL; know the contents, and that the statements in it are true and correct to the best of their knowledge, information, and belief.

Rainsford J. Winslow — Winifred W. Winslow

SUBSCRIBED AND SWORN TO BEFORE ME THIS 25th day of February, 1988.
WITNESS my hand and official seal.
My commission expires August 7, 1991.

NOTARY PUBLIC STATE OF COLORADO JEAN K. NIELSEN (SEAL)

Notary Public, Jean K. Nielsen

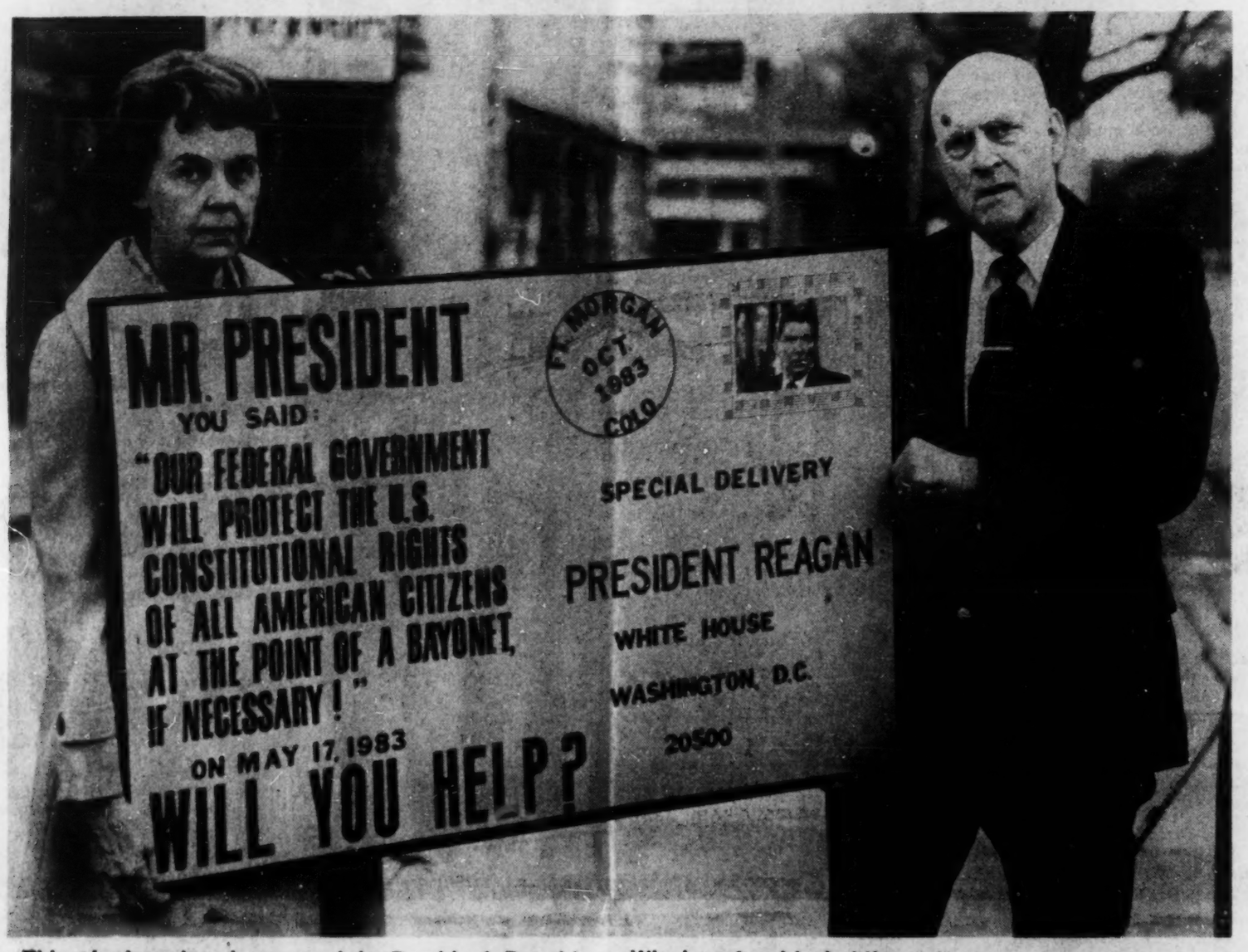
We Need Your Help!

Perhaps Working Together We Can Improve The Legal System!

We are not seeking money, we seek letters, lots of letters of protest about what has happened in this Morgan Heights lawsuit and legal cases you know about or have been put into yourself. What has happened in this Morgan Heights case is disgraceful. We know that we are not the only ones who have suffered at the hands of Colorado and Federal Courts.

Literally thousands have been hurt wrongfully. There has to be a message sent to the powers that be and this Morgan Heights case could be the means of getting somebody's attention. You might like to follow the suggested outline below as to what you may do and say. Use your rights to express yourself, write a letter and express your feelings!

Reagan Sent No Bayonet



This giant postcard was sent to President Ronald Reagan in late October 1983, shortly after he made his "Bayonet Speech." This was just another way the Winslows fought what they felt were severe injustices they have observed. This "Postcard" weighed nearly 30 pounds and cost nearly $14 to mail to President Reagan.

This Is An Appeal To

The Court Of Last Resort:

THE PEOPLE

WE THE PEOPLE Have The Power To Run America, But, THEY THE BUREAUCRATS, Do!

During the last nine years, many of our friends have asked if there was some way they could help us with this horrible lawsuit mess. There really wasn't much they could do. There is now. What we seek are lots of letters from YOU THE PEOPLE, asking the powers that be to let us, the Winslows, be heard, to let us have witnesses to support our position, and to let us present evidence in a Courtroom concerning the fair trial/impartial judge issue, which we were denied. If you like, tell in your letter your thoughts about the judicial system. Tell about some experiences you have had, if any. Maybe it might be a divorce case, a child custody case, a traffic violation matter, any sort of legal problem — spell it out in the letter. The letter can be one or two sentences long, or four pages. You decide.

It is important that these letters, while addressed to state leaders, be mailed to us so that we can gather them all up, make copies and send them out to where they might do some good in a bunch. Don't send them directly to the leaders, but address the letter itself to the State leader following the form below if you like. Use your own form, if you prefer.

Call up your friends and urge that they write a letter. Point out the need of getting control of this country back in the hands of the people so that we can stop injustices that are going on right now. We, were like most people. We thought the Courts were doing a fine job, but we paid no attention. We had nothing to hide. We had provided exactly what we had promised when we sold lots in Morgan Heights. On June 21, 1988, we start the tenth year of this legal horror story. We had no idea, when the case started that it would go on this long, thinking it would be over quickly. How wrong we were. YOU could become entangled in a Courtroom case, too. Write the letter and mail it to us so we can forward it to those who can reform the judicial system — the Governor, Colorado Legislators, U.S. Congressmen, and Senators. Something needs to be done. You CAN help! You can be sure personal letters are important and are read.

Here Is A Suggested Outline Of What You Might Do:

NUMBER ONE

Use a blank white sheet of paper or put in on your letterhead if you have one. Use your typewriter, a black pen or pencil so that it can be copied. (Blue ink does not copy very well). Be sure and sign your letter; husband and wife, both sign.

NUMBER TWO

Address your LETTER to Governor Roy Romer, Colorado Legislators, U.S. Congressmen, and Senators. (You don't need to list the names unless you want to).

NUMBER THREE

Here's what you might say: Please help the Winslows get into a Courtroom so they can be heard on the fair trial/impartial judge issue. Then perhaps tell these State leaders to investigate the judicial system. Tell them what legal experiences you know about. Ask for judicial reform. We believe that if the Morgan Heights residents hadn't protested the attorney fees that were assessed, the Colorado Supreme Court may have done nothing. This is your means of using your citizenship to correct the injustices that are going on. Tell your feelings in your own words.

NUMBER FOUR

If you can, make three, five, ten phone calls to others and urge that they do the same thing. Call attention to THE WINSLOW JUSTICE JOURNAL. If you need extra copies of this ad, we can supply them to you. We urge that you call us for extra copies so you can forward them to others elsewhere. Exercise your rights as an American and don't let the bureaucrats take over the country because it is the job of WE THE PEOPLE!

NUMBER FIVE

Mail your letter to us at the address below. We will copy the letters and forward them to the Governor's office, the Colorado Legislators, the Congressmen in Colorado and both U. S. Senators. They should know what is happening out here and they will want to know about YOUR story.

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